

DEPARTMENT OF HOMELAND SECURITY

**U.S. IMMIGRATION AND CUSTOMS
ENFORCEMENT**

**OFFICE OF TRAINING AND
DEVELOPMENT**



Continuing Case Scenario GUIDE

**FIELD OPERATIONS TRAINING PROGRAM -
PROSECUTIONS**

U.S. Immigration and Customs Enforcement Lab Exercise Plan

Continuing Case Scenario Instructor GUIDE

Lab Exercise Guide

I. Instructor/Evaluator Preparation

Instructor Notes: TD 1: 0930 - 1130

During the 2-hour CCS introduction class, the FOTP-P coordinator, CCS coordinators (CCS-C) and a LEGAL instructor will provide an overview of the entire FOTP-P course, to include the Motivation, Objectives, Review of Prerequisites and Agenda.

The 24 students will then be equally divided into 3 Field Operation Teams (FOTs). Each group will be assigned a CCS-C who will be present with their group during all CCS Phases.

A. Motivation

You are here because you are a member of one of ERO's progressive enforcement teams. Inevitably, you will become aware of individuals illegally present in the United States who are in violation of federal law. Those individuals who constitute the most serious enforcement challenges for ERO and who pose the greatest threat to the community, such as aliens with reentry and significant recidivism records, smugglers, fraudulent document vendors, and violent criminal aliens, will be presented to the U.S. Attorney's Office (USAO) for criminal prosecution. But criminal prosecutions can involve much more than just presenting a case and providing reports and documents to the assigned Assistant U.S. Attorney (AUSA). There are a multitude of skills you will need to possess as well as a working understanding of the criminal justice system in order to successfully prepare and present cases to an AUSA. This FOTP-P course will educate you on managing a criminal prosecution from the initial lead all the way through the completion of the criminal proceedings, to include disposing of evidence.

Lead information may come to you by way of other aliens, law enforcement officers, witnesses or victims. These sources will need to be interviewed and the information may need to be memorialized in the form of a sworn statement. Notes and statements will have to be developed into a variety of reports, all of which will aid in documenting the development and progress of the investigation/case and in presenting it for prosecution. You will have an opportunity to practice not just obtaining information from a source, but further developing that lead by way of additional records checks and requests for information. Your oral and report writing skills will be enhanced as you practice presenting the case to an AUSA in a logical and concise manner. Additionally, you will be provided with many example reports and forms that can be used as guides while working in the field.

Once accepted for prosecution, a multitude of investigative steps, not typically followed for a straight-forward 8 USC 1326 case, may be used to further develop the case, i.e., to strengthen the proof necessary to establish the elements of other federal violations.

(b)(7)(C) Case Management is the mandatory reporting tool used by ERO officers to document and manage the prosecution case, including all of the possible investigative steps, e.g., victim interviews, surveillance notes, and administrative subpoena results. You will practice opening and modifying a case, creating and uploading investigative reports, creating and linking subject records to those cases, and manually managing statistics. You will also have many example narratives that can be used as guides when you report back to your duty stations.

ICE

ERO

Prosecutions

18 USC 1015(e)

- (e) Whoever
 - knowingly
 - makes any false statement or claim that he is, or at any time has been, a citizen or national of the United States,
 - with the intent –
 - ♦ to obtain on behalf of himself, or any other person, any Federal benefit or service, or
 - ♦ to engage unlawfully in employment in the United States



U.S. Immigration
and Customs
Enforcement

ICE

**ERO
Prosecutions**

END BLOCK ONE

REVIEW

- What offenses may ERO consider charging an alien with, depending on the facts?
- What offense requires the alien to know that he/she is using the means of identification of an actual person?
- Which offense is the most frequently prosecuted?

PREVIEW

- BLOCK 2 / Day 3 – Coordination with other federal agencies
- Review CCS case and discuss presentation
- Phase #3 / Day 3 – present case to AUSA



U.S. Immigration
and Customs
Enforcement

ICE

ERO

Prosecutions

START BLOCK TWO

- Administrative arrests can be made, with or without a warrant, when you have PC that an alien violated the INA.
- Your authority with criminal arrests is similar.
- Administrative arrests may occur before prosecution is contemplated (LEAR/NFOP), or.....
- There may be situations where you are already aware of the location of a criminal alien, and seek USAO concurrence before taking any enforcement action (the CCS scenario).



U.S. Immigration
and Customs
Enforcement

ICE

**ERO
Prosecutions**

REVIEW

- There are a number of federal offenses aliens may commit
- 8 U.S.C. 1326(a) and (b)(2) are accepted for prosecution by most USAOs
- In addition, aliens may also have violated 18 U.S.C. 922(g)(5), 911 or 1028A

No matter when or how you set the federal court procedures into motion, a number of DOJ and District Court components will be involved. Being aware of these entities and the need for coordination allows the system to operate smoothly and successfully.



U.S. Immigration
and Customs
Enforcement

AGENDA

- BLOCK 2 / Day 3: EPO #2 – Coordination with USAO / AUSA and USMJ
- Review TAMPICO case with instructor(s) and discuss presentation
- Phase #3 / Day 3: Present case to AUSA



ICE

ERO

Prosecutions

Coordination

- Once you contemplate prosecution, preferably prior to an arrest, contact the appropriate AUSA (ex: duty officer, SAUSA, AUSA assigned to ICE cases)
- Discuss the case to include providing any supporting documents or reports if necessary
 - Accepted
 - Declined
 - Referred

WHAT IS THE DIFFERENCE?

- If accepted, determine who prepares what (ex: Criminal Complaint, Application for SW, Affidavit, AW and/or SW – Districts vary)



U.S. Immigration
and Customs
Enforcement

ICE

ERO

Prosecutions

Coordination

- Determine the schedule of events/hearings
- Who contacts who – you or the AUSA?
 - DOJ (USMS)
 - ♦ Clerk of Court (COC)
 - ♦ USMJ
 - ♦ USPO/PTSO
 - District Court
- Be prepared to appear before the USMJ to sign the Criminal Complaint, Application for SW and supporting Affidavit, and for the issuance of any AW or SW



U.S. Immigration
and Customs
Enforcement

ICE

ERO

Prosecutions

Coordination

- USMJ considers and/or signs proposed Criminal Complaint, Application for SW, Affidavit, AW and/or SW
- If signed, a Criminal Complaint is formally filed with the COC, the original AW goes to the USMS, and you get a copy of the AW
- Once arrested/transferred to federal custody, arrestee appears before a USMJ for an IA
- The DUSM executes the original AW



U.S. Immigration
and Customs
Enforcement

EX: Compare (b)(6),(b)(7)(C) (1028) and (b)(6),(b)(7)(C)

(b)(6),(b)(7)(C) (1001) cases

ICE

ERO

Prosecutions

Coordination

- If signed, the Application for SW and supporting Affidavit are held until after the warrant is served (within 14 days; between 6 a.m. and 10 p.m.)
- You receive the original SW to have during the actual search
- You must prepare an inventory and return to the designated magistrate

****Execution of Criminal Warrants LP (Day 7) will further explain FRCrmP 41**



U.S. Immigration
and Customs
Enforcement

ICE

ERO

Prosecutions

Coordination

USMJ / Clerk of Court

- The COC or the USMJ's assistant will set the schedule for the USMJ to include the IA
- Responsibility for coordination with the USMJ/ COC may fall with the AUSA or you – How does it work in your district?
- The Application for SW, supporting Affidavit, SW and a copy of any return or inventory will be delivered by the USMJ to the COC after the return has been made
- Coordinate with USMJ re: SW execution/return



U.S. Immigration
and Customs
Enforcement

Working with the AUSA, a decision may be made that the best course of action is to obtain a criminal arrest warrant (AW) and/or search warrant (SW) prior to encountering the criminal alien. In order to ensure the successful execution of the AW and/or SW, an FOT will need to have a written plan. You will practice preparing an ICE Enforcement Operation Plan (ICEEOPPLAN) prior to the execution of a criminal warrant. Basic team tactics will be expanded to include Perimeter, Approach, Stacking, Breaching and Warrant Service Entry. You will also be guided in the proper procedures of executing a criminal warrant, with an emphasis on safety and legality.

Taking another person's property means you are exposed to a significant risk of civil and/or criminal liability based on claims that may be made. You need to be aware of due process, asset forfeiture policy and the law so that you can correctly seize contraband and evidence found during the normal course of your duties, including the execution of a SW. You will practice locating and seizing evidence to include initiating and recording the chain of custody, and properly packaging, transporting, securing and disposing of that evidence or property.

ERO officers are mandated to maintain case file folders for each criminal prosecution. These folders contain documents used as evidence during judicial proceedings, and proper preparation and storage of these folders is critical in maintaining the integrity of the case. By the end of this CCS, you will have a complete prosecution case file folder containing many of the documents you may have in an actual criminal case, which can be used as a guide for cases you will be presenting in the future.

B. Orientation: (TD 1: 0930 – 1130)

Instructor Notes: Each student will sign out ICE academy property to include Thumb Drive. Students will keep assigned thumb drive with them during the duration of the course and return on the last day after making a copy on a CD.

****Advise students to work off the thumb drive rather than download onto H drive as it will slow down all computers and lead to time management issues.**

Each FOT member will prepare and maintain their own prosecution file folder during this course; however, the lecture and demonstration will not be conducted after Phase 4. Documents needed for the CCS are provided in the PWs while forms needed to be produced are provided on student thumb drives. CCS phases are considered TEAM practice, and lead to TEAM P.E.'s.; however, each individual student will need to maintain their own prosecution case file folder.

OPTION: CCS-C may choose to print and/or make the extra copies for their respective FOT. Given time constraints and (b)(7)(C) issues, it may not always be possible for the FOT members to do their own printing/copying.

i. INTRODUCTION

1. FOTP-P coordinator will introduce self
2. CCS-Cs will be introduced as Supervisory Detention and Deportation Officers (SDDO) located at the Charleston, SC ERO office under FOD Glynco
3. Legal instructor(s) will be introduced as the Assistant United States Attorney (AUSA) located in Charleston, SC

ii. Field Operation Teams A through C

1. Students will be divided into three teams of eight (FOT A, FOT B, and FOT C)
2. Each team will be assigned a CCS-C
 - a. Teams A, B and C are ERO FOTs operating in Charleston, SC
 - b. Each member is responsible for contributing to the efforts of the team
 - c. Each FOT is responsible for the identification, apprehension, and criminal prosecution of a Priority 3, Level 1 target alien

ICE

ERO

Prosecutions

Coordination

Let's prepare for our presentation to the AUSA:

- How did you come to find out about TAMPICO?
- How do you know he is a deported alien?
- How do you know he is an aggravated felon?
- How do you know he is the same person that was deported?
- How do you know he didn't have permission to come back?
- What offense(s) could you charge now?
- Are there any other offense(s) you may be able to establish?

**** NOTE TAKING AND TABBING DOCS MAY HELP**



U.S. Immigration
and Customs
Enforcement

ICE

ERO

Prosecutions

END BLOCK TWO

REVIEW

- Who do you contact when contemplating a federal warrant?
- Who else must you coordinate with in order to obtain an AW and/or SW?
- Whether you are responsible for preparing those documents or not, what steps will you need to take to obtain, execute and/or return them

PREVIEW

- Phase #3 / Day 3 – present case to AUSA
- BLOCK 3 / Day 6 – Federal court documents
- Phase #8 / Day 6 – Prepare court documents



U.S. Immigration
and Customs
Enforcement

START BLOCK THREE

- Administrative and criminal arrests can be made with or without a warrant
- Regardless, forms must be completed, to include charging documents and warrants
- Administrative forms, e.g. NTA (I-862) and WA (I-200), assist the IJ in the removal process
- Federal court documents are required in the federal criminal process



REVIEW

- Coordinating with an AUSA and the USMJ is key in order to initiate a prosecution
- There is a procedure to follow in having the USMJ consider the forms that will be submitted

Being aware of and knowing how to complete these key federal court documents will assist you in properly starting your prosecution case



AGENDA

- BLOCK 3 / Day 6: EPO #4 – Federal court forms
- Review example federal court forms and attachments
- Phase #8 / Day 6: Prepare federal court forms



ICE

ERO

Prosecutions

Documents Required to Formally Accuse Defendant

Type of Offense	Court	"Minimum Charging Document"
Capital	District	Indictment Only
Non-Capital Felony	District	Indictment, unless waived, and then by information
Misdemeanor	District	Information
Misdemeanor	Magistrate	Complaint



U.S. Immigration
and Customs
Enforcement

Documents Required to Formally Accuse Defendant

Criminal Complaint – AO 91

- Used to obtain a federal AW prior to arrest or after warrantless arrest
- Establishes PC that crime was committed and defendant committed it (usually facts are set forth in an attached affidavit)
- Signed, under oath, before a USMJ or, if none is reasonably available, before a state or local judicial officer

****Do you prepare these? See FRCrmP 3**



Documents Required to Formally Accuse Defendant

Information –

- Formal charging document for a misdemeanor (or felony if the defendant waives the indictment)
- Plain, concise and definite written statement of the essential facts
- Similar format to an indictment
- Prepared by an AUSA and signed by an attorney for the government



Documents Required to Formally Accuse Defendant

Indictment –

- Formal charging document issued through GJ
- Prepared by an AUSA and signed by an attorney for the government
- Must be used for an offense punishable by death or imprisonment for more than one year
- GJ determines if PC has been established that a defendant has committed the offense

****When would you choose one over the other?**



ICE

**ERO
Prosecutions**

AO 442 - Arrest Warrants

- Obtained in conjunction with:
 - complaint and supporting affidavit
 - following the return of an indictment
 - upon filing of an information
- Orders the arrest and taking of the individual to a USMJ without unnecessary delay

** See FRCrmP 4

** Review the (b)(6),(b)(7)(C) (1028) AW

** Review the 1253 (b)(6),(b)(7)(C) AW
and Criminal Complaint



U.S. Immigration
and Customs
Enforcement

- d. Successful completion of the case will depend on each of the FOTs being provided information as well as completing their own work
3. Review the three-week FOTP-P class schedule
 - a. Each block of instruction is followed by a related CCS phase
 - b. During the block of instruction, material will be presented and, when appropriate, demonstrated
 - c. During the subsequent CCS phase, students will practice what was learned (LABS)
 - d. The CCS-C will offer feedback and, if warranted, provide additional practice
 - e. As the CCS progresses, designated phases will test what the students have practiced in previous phases (P.E.)

Instructor Notes: FOTs will proceed to BREAKOUT ROOMS

Use the Phase Leader Assignments document [ERO Share Drive, FOTP-P folder, CCS folder, CCS Orientation].

Although there will be a class president responsible for party and shirts, each FOT should select one member to be the overall TL responsible for ensuring members are accounted for (especially with M4 class at NWS). The TL will be assigned student number 7 [see below for further explanation].

Each FOT member is required to take lead, or otherwise perform required task, in at least three lab phases, one P.E. phase, and one (b)(7)(C) entry. Assign all phases (LAB and P.E.) during this initial meeting using the Leader Assignment document. Each Phase already lists the student number; however, how each FOT is assigned these numbers is up to the CCS-C. Option 1: Randomly assign each student a number, e.g., pulling numbers out of a hat. Option 2: Ask students to choose their number based on preference for certain assignments.

Provide FOT with a copy of the completed Assignment sheet.

REMINDER: The majority of the documents expected to be produced have already been drafted. FOTs will only have to make minor changes or adjustments rather than write from scratch. Report writing occurs during Phases 7, 11, 17 and 25.

TIME CONSTRAINTS: Due to the length of time it takes for computers to log-on, discuss ways to save time when moving over to break out rooms, e.g., always sitting at same desk, staying logged on with computer locked, or logging on BEFORE 0730 start time.

FINALLY: Direct students to the handouts for Phase 1 and 2 in their PWs when preparing for TD 1 afternoon CCS.

iii. FOT and CCS-C Meeting

1. FOT and CCS-C will break out into separate rooms
2. Lab phase leader assignments:
 - a. Phase 2: I-138
 - b. Phases 3, 10, 12 and 18: oral presentation, briefing or testimony
 - c. Phase 7: write MOI
 - d. Phase 8: court documents (entire FOT will have a role)
 - e. Phase 9: ICEEOPPLAN
 - f. Phase 11: SPEAR
 - g. Phases 13,14 and 24: Team Leader (TL) and Evidence Custodian (EV)
 - h. Phase 19: EABM and I-44
 - i. Phase 20: CIS Letter and FDL request
 - j. Phase 24: 3 Memos to File
3. (b)(7)(C) CM assignments:
 - a. Phase 4 – Open Case
 - b. Phase 5 – ROI #1
 - c. Phase 6 – ROI #2
 - d. Phase 7 – ROI #3

ICE

ERO

Prosecutions

Search Warrants

- AO 106 – Application for SW [the federal court form used to apply for a SW]
- AO 93 – Search Warrant
- Authorizes a search for evidence of a crime; contraband, fruits of crime, items illegally possessed; property used in committing a crime; or a person to be arrested



U.S. Immigration
and Customs
Enforcement

ICE

ERO

Prosecutions

Search Warrants (cont)

- Obtained to execute a criminal arrest warrant at a third party residence
- Obtained to execute an administrative warrant when unable to obtain consent

** Review the (b)(6),(b)(7)(C) (1028)
SW

** Review the 1325 (Eastern District
Michigan) SW



U.S. Immigration
and Customs
Enforcement

Affidavit

(b)(6),(b)(7)(C)

Five [AW] / Six [SW] Elements:

- Bona fides – ID's officer and sets forth CREDENTIALS, e.g., training, work experience, education, language abilities
- Purpose – state what the affidavit is offered in support of (Complaint and/or Application for SW), what violation(s) of law are involved, and basis of the information



ICE

ERO

Prosecutions

Affidavit

- Parameter statement – sets forth that the entire case is not being presented and that the affidavit is being submitted for the limited purpose of a PC determination
- Probable cause statement – chronological narrative of pertinent facts [not all facts known] deemed necessary to satisfy the PC standard
- Summary – conclusion with restatement of the affiant's belief that PC exists for the charge [AW] and/or that the person and/or property described will be located [SW]



U.S. Immigration
and Customs
Enforcement

Search Warrant Affidavit

Particularity Requirement

- Description of the premises to be searched and items to be seized
 - 4th Amendment requires that a warrant “particularly describ[e] the place to be searched, and the persons or things to be seized”
 - separate attachments for place as well as person/items –detailed and specific

** Review 1028 (b)(6),(b)(7)(C) SW



ICE

ERO
Prosecutions

END BLOCK THREE

REVIEW

- What are the three ways in which you can formally charge/accuse a defendant?
- What forms must be completed when attempting to obtain a SW?
- Where does the “Particularity Requirement” come from? (b)(6),(b)(7)
(C) FAVORITE!!)

PREVIEW

- Phase #8 / Day 6 – Prepare court documents
****You will have to finish by 1130 on Day 9****
- Phase #10 / Day 11 – Present court documents to the USMJ
- BLOCK 4 / Day 11 – Coordination with USMS / PTSO and Initial Appearance (FRCmP)



U.S. Immigration
and Customs
Enforcement

ICE

ERO

Prosecutions

Document Assembly

- Original AW packet will be filed with the COC
- Request copy/copies from the COC
- TL to take AW copy to arrest/search location
- Rule 4(c)(2) - upon arrest officer must show to defendant or, if no AW, inform of
 - warrant's existence;
 - offense charged; and
 - if requested, show the AW ASAP



U.S. Immigration
and Customs
Enforcement

ICE

ERO

Prosecutions

Document Assembly (cont)

- Original Application w/ attachments retained by USMJ
 - Maintain copy of affidavit for reference
 - Do NOT leave at search location
- Take original SW w/ original attachments (and at least 1 copy) to search location
 - After execution, original SW w/ attachments will be returned along w/ copy of inventory; SW packet then to COC
 - Leave copy of SW w/ attachments, along w/ receipt, w/ person whose property was taken or at search location
 - Any additional SW copy/copies available if needed and/or for the file



U.S. Immigration
and Customs
Enforcement

ICE

ERO

Prosecutions

START BLOCK FOUR

- Administrative arrests may occur before prosecution is contemplated or..... you may obtain criminal warrants before the encounter
- Coordination with the AUSA and USMJ is just as important as with OPLA and the EOIR
- An administrative arrest sets procedures in motion that must be followed for a case to successfully proceed in the EOIR
- Similarly, a criminal arrest requires that certain procedural steps be followed in the federal criminal justice system in accordance with the FRCrmP



U.S. Immigration
and Customs
Enforcement

ICE

ERO

Prosecutions

REVIEW

- It is necessary to coordinate with an AUSA and the USMJ at the start of a prosecution
- Various federal court forms are required to initiate a case and procedures are followed for them to be issued

Knowledge of the other entities in the federal criminal justice system that must be contacted once an arrest occurs is also very important



U.S. Immigration
and Customs
Enforcement

- e. Phase 15 – Incident “AR” Report
- f. Phase 16 – ROI #4
- g. Phase 21 – ROI #5
- h. Phase 23 – STATS and ROI #6
- 4. Testable phases, i.e., P.E.’s:
 - a. Phase 17: SEN (SIR)
 - b. Phase 22: ERO Prosecutions (Grand Jury)
 - c. Phase 25: (b)(7)(D) Case Management (ROI #7)
 - d. Phase 25: ERO Report Writing (ROI #7)
 - e. Phase 26: Prosecution File Folder (Closed Case)
 - f. P.E. days 14-15: ICEEOPLAN, Execution and Evidence
- 5. ALL students are required to prepare and maintain a prosecution case file folder
- 6. Prepare students for Phases 1 and 2 (Review of DFOTP SOI)
 - a. Your office has just received information from the Charleston County Detention Center (CCDC) regarding a criminal alien who was inadvertently released
 - b. The information provided is located in your participant workbook under the “CCS Phases 1 and 2” tab
 - c. Each FOT will develop the lead, determine what federal violations have occurred, present the case for prosecution, locate and apprehend the target, and manage the case through the completion of criminal legal proceedings
 - i. FOT A = [REDACTED] 1325 Register Rd
 - ii. FOT B = (b)(6),(b)(7)(C) = 1327 Register Rd
 - iii. FOT C = [REDACTED] = 1328 Register Rd

II. Student Practice (Phases)

A. Phase 1 (TD 1: 1430 - 1530)

Obtain and document lead information, and evaluate that lead to determine if an illegal alien is amenable to criminal prosecution.

Instructor Notes: FOTs will proceed to BREAKOUT ROOMS

SEE FOTP-P Coordinator for your teams A# which has been pre-determined prior to the start of this course. Each FOT will receive generic information on TAMPICO from Sgt. Johnson of the CCDC and should be directed to their PW. (Version A, B or C) containing their specific information.

- i. LEAD from CCDC (b)(6),(b)(7)(C) – Records and Release)
 - 1. (b)(6),(b)(7)(C) was arrested last night for “DUI”.
 - 2. HMC provided the arresting officer with a valid SC DL (b)(6),(b)(7)(C) bearing address (b)(6),(b)(7)(C) North Charleston, SC, 29405
 - 3. HMC was released on a bond prior to fingerprint results being returned
 - 4. Subsequent to release, the submission of HMC fingerprints during the booking process resulted in a positive match to (b)(7)(C) (DHS Automated Biometric Identification System). The IAR (Immigration Alien Response) indicated HMC is actually (b)(6),(b)(7)(C) Costa Rica, A#####, a previously deported aggravated felon.
 - 5. TAMPICO a/k/a HMC was given back his SC DL and has since retrieved his vehicle from impound

ICE

ERO

Prosecutions

AGENDA

- BLOCK 4 / Day 11: EPOs #2 and #3 – USMS and USPO, and the Initial Appearance (IA)
- Review the AW and SW you have obtained for (b)(6),(b)(7)(C) and his residence
- Phases #13 and #14 / Day 12: Execution of the AW for (b)(6),(b)(7)(C) and the SW at his residence



U.S. Immigration
and Customs
Enforcement

ICE

ERO

Prosecutions

Coordination

- Favorable contacts or dealings will likely vary from district to district
- Provide as much advance notice as possible;
AVOID SURPRISES
- Know your district's procedures
 - Transportation to/from jail
 - Do you stay or do you go?
- Know what documents are needed (USM312)
- I-247



U.S. Immigration
and Customs
Enforcement

ICE

ERO

Prosecutions

Coordination

- Works for the district court, for either USPO or the USPTSO (a separate agency)
- Interviews defendant prior to the IA
 - promptly transport detainee to USMS in advance of the IA
 - notify USMS and PTSO in advance
- Prepares pre-trial services report for the USMJ
 - to assist USMJ in determining detention or bond status
 - delays with report can cause a delay in the proceedings and irritate the USMJ
- YOU may be their source of information



U.S. Immigration
and Customs
Enforcement

ICE

ERO

Prosecutions

Federal Court Procedures

- The defendant's first formal hearing in the federal criminal justice system
- RULE 5: A person arresting a federal defendant within the U.S. must take that person "without unnecessary delay" before a USMJ or a state or local judicial officer if a USMJ is not RA
- Corley v. U.S. [4/6/09] – the USSC held that confessions made before the IA and more than 6 hours after arrest are inadmissible if the delay was unreasonable



U.S. Immigration
and Customs
Enforcement

ICE

ERO

Prosecutions

Federal Court Procedures

PURPOSE

In a case where the defendant is charged with a felony, he/she is to be informed of the:

- Complaint against the defendant and any affidavit filed
- Right to retain counsel or request appointed counsel
- Circumstances, if any, under which he/she may secure pretrial release
- Right, if any, to a PH
- Right not to make a statement and that any statement made can be used against the defendant



U.S. Immigration
and Customs
Enforcement

ICE

ERO

Prosecutions

Federal Court Procedures

- If the prosecution wants to have the defendant detained, the AUSA will make a motion at the IA seeking such a result
- Be prepared to explain whether the defendant has been notified of his/her consular rights and if notification has been made
- If not, be prepared to promptly inform the defendant of his/her rights and to make the necessary notification



U.S. Immigration
and Customs
Enforcement

** What country is (b)(6),(b)(7)(C) from?

ICE.2014-FOIA-01578.003014

ICE

ERO

Prosecutions

END BLOCK FOUR

REVIEW

- In addition to the AUSA and the USMJ, what other agencies must you coordinate with in advance of or after making an arrest?
- What is the importance of the PTSO?
- How might you assist the PTSO?
- What hearing occurs after the federal arrest based on the filing of a criminal complaint?

PREVIEW

- Phase #13/14 / Day 12– Warrant execution
- BLOCK 5 / Day 12 – PH/DH and Grand Jury
- Phase #18 / Day 13 – testify at PH/DH
- Phase #22 / Day 13 – testify before GJ (P.E.)



U.S. Immigration
and Customs
Enforcement

ICE

ERO

Prosecutions

START BLOCK FIVE

- As with admin arrests, an alien's federal arrest begins a process that follows procedures (FRCrmP)
- In the admin setting, an arrest leads to a decision concerning detention or bond
- In the federal system, one of the first decisions made by the USMJ is whether to release or detain pending resolution of the case
- In addition, an indictment may be required



U.S. Immigration
and Customs
Enforcement

ICE

ERO

Prosecutions

REVIEW

- Coordinate with the USAO, USMJ, USMS and USPO/ USPTSO
- The IA is a defendant's first formal hearing after arrest
- You must ensure proper coordination occurs and that the case is ready to proceed

The case isn't over yet.....there are many more steps including your presence at hearings and possible testimony



U.S. Immigration
and Customs
Enforcement

ICE

ERO

Prosecutions

AGENDA

- BLOCK 5 / Day 12: EPO #3 – FRCrmP – pretrial release/detention through to an appearance before the GJ
- Review the (b)(6),(b)(7)(C) indictment and example indictments from other cases
- Phase #18 / Day 13 – attendance at PH/DH
- Phase #22 / Day 13 – grand jury presentation (Final Test of Activity)



U.S. Immigration
and Customs
Enforcement

- ii. FOT and CCS-C team meeting
 1. What did the FOT learn from the information provided?
 2. Discuss next steps to be taken (Phase 1 leads directly into Phase 2)

Instructor Notes: Can FOT identify WHO target is (b)(6), (b)(7)(C) WHAT possible violations exist (Recentry, False claim, Fraud does, ID theft), WHERE target located (132# Register Road), WHEN target last encountered (TD 1), HOW info can be verified (student answers should at a minimum include: A-file review, records checks and admin subpoena).

B. Phase 2: (TD 1: 1530 – 1630)

Review A-file and obtain information from DHS databases as well as outside sources and agencies in order to further verify the investigative lead, establish the elements of any additional crime(s), and develop the criminal case.

Instructor Notes: Ensure FOT carefully reviews the DMV application, specifically the final section which lists the ID submitted to include proof of citizenship and proof of residency as it indicates (b)(6), (b) showed a BC and SSN card as well as a water bill. Send the I-138 to the water company. Per POLICY and DHS Handbook for SPII, the A# must be protected since the outside agency has no need to know; therefore, the A# should be left off of the I-138.

- i. A-file review
 1. A-file is available for immediate review
 2. Locate documents establishing 8 USC 1326(a) and (b)(2)
- ii. Discuss all mandatory and applicable records checks to be completed, including but not limited to:
 1. (b)(7)(C) and NCIC
 2. CIS and CLAIMS
 3. ACCURINT (CLEAR) and SC DMV
- iii. I-138 – ICE Admin Subpoena
 1. Complete the I-138
 - a. Address to “Charleston Water System”
 - b. ICE Administrative Subpoena Log
 2. Receive the information back

C. Phase 3 (TD 3: 0830 – 0930)

Presents the facts of the case to the USAO to: determine if the case will be accepted for criminal prosecution; discuss which criminal violations are already known to have occurred and which need to be further established; and, determine the schedule of events including contact with other DOJ and Court entities.

Instructor Notes: FOTs will proceed to BREAKOUT ROOMS

PROP: LAW BOOK. Legal instructor has reviewed all KNOWN and POSSIBLE criminal violations during the demonstration portion of ERO Prosecution lecture. FOTs are expected to articulate the violation of 8 USC 1326(a) and (b)(2) and 18 USC 911 (multiple counts).

CCS-C acts as AUSA during this phase: accept case; discuss other potential charges to include 18 USC 1028(a)(1), (a)(6), (a)(7), and 1028A; request FOT obtain a victim statement and conduct surveillance at target location; and, advise court documents will be due on TD #11 for presentation to the USMJ.

Use PHASE 3 INSTRUCTOR SCRIPT as a guide for what to say and how to direct the “presentation”. Provide FOT feedback regarding any mistakes or improvements to be made, based on answers listed on the script sheet.

- i. FOT and CCS-C Meeting

Review all of the information derived from Phases 1 and 2 to prepare for oral presentation of case to the AUSA

 1. How will you introduce yourself and explain your duties?
 2. Background information (explain all fact known to date)

ICE

ERO

Prosecutions

Federal Court Procedures

- PTSO interview / recommendation
 - Prior to IA
 - Report is then used by the USMJ re: bond/detention
- YOUR ROLE
 - Coordinate with AUSA re: detention
 - Ensure that PTSO has all relevant info



U.S. Immigration
and Customs
Enforcement

Federal Court Procedures

USMJ options for issuing an order:

- ROR or unsecured bond
- Release on conditions including bond
- Temporarily detain [NMT 10 days] to permit a revocation of conditional release, deportation or exclusion
- Conduct DH at the IA [defendant and prosecution may seek a continuance]
- Temporarily detain until DH can be held



ICE

ERO

Prosecutions

Federal Court Procedures

- Generally held within 3 to 5 days of the IA
- To determine whether held pending trial
- Proffer / testimony / evidence
- Don't forget to file the I-247 before the hearing
- Be prepared to testify as to why the alien is a flight risk or a threat



U.S. Immigration
and Customs
Enforcement

ICE

ERO

Prosecutions

Federal Court Procedures

BAIL REFORM ACT

- Requires pre-trial release unless the defendant is a flight risk or danger to person / community
- The government must prove this risk
- Then the USMJ makes the determination
- KEY: Ensure AUSA understands the situation if the defendant is not detained



U.S. Immigration
and Customs
Enforcement

ICE

ERO

Prosecutions

Federal Court Procedures

Required if charged with an offense other than a petty offense unless:

- The defendant waives PH
- The defendant is indicted
- The government files an information
- The defendant is charged with a misdemeanor and consents to trial before a USMJ
- The government dismisses the case

******So why would you try to get an indictment rather than a criminal complaint?



U.S. Immigration
and Customs
Enforcement

ICE

ERO

Prosecutions

Federal Court Procedures

- The PH must be held within a reasonable time
 - NLT 10 days after IA if in custody
 - NLT 20 days after IA if not in custody
- PH and DH are often held at the same time
- The hearing is held to determine whether PC exists to continue the case
- If no PC is found, the government may prosecute later



U.S. Immigration
and Customs
Enforcement

Federal Court Procedures

- The defense may:
 - cross-examine adverse witnesses [including officers]
 - introduce evidence
 - NOT object on the ground the evidence was obtained unlawfully
- After a witness has testified, on motion of the other party, any statement of that witness must be produced for the examination and use of the moving party

**** Phase 18:** (b)(6),(b)(7)(C) DH/PH – What will you argue?



ICE

ERO

Prosecutions

Federal Court Procedures

- Independent body
 - 16 to 23 member (16 must be present)
 - under supervision of the district court
 - under daily guidance and scheduling by USAO
- Investigates crimes and return indictments
- Larger districts may meet daily while smaller ones may meet once per month
 - **How does your district work?
- File indictment within 30 days of arrest



U.S. Immigration
and Customs
Enforcement

ICE

ERO

Prosecutions

Federal Court Procedures

- A “true bill” will be returned if at least 12 agree there is PC to believe defendant committed the offense(s)
- GRAND JURY SECRECY
 - Encourages witnesses to come forward
 - Minimizes risk defendant will flee or thwart investigation
 - Protects accused persons later exonerated
- Most USAO’s have a GJC
- Coordinate with USAO/GJC re: date and time



U.S. Immigration
and Customs
Enforcement

Federal Court Procedures

USAO / GJC will:

- Arrange for the issuance of GJ subpoenas to obtain evidence and/or attendance of witnesses
- Issue and account for subpoenas
- Call and examine witnesses during ongoing investigations
- Present proposed indictments and call witness(es) to establish PC

****Let's look at (b)(6),(b)(7)(C) indictment found in your PW**



3. What are the criminal violations?
4. What information is needed by the USAO?
- ii. Presentation
 1. CCS-C will role-play as the "AUSA"
 2. LEGAL instructor will be available for further discussion
 3. "AUSA" will:
 - a. Direct the FOT to obtain victim statement and conduct surveillance
 - b. Provide schedule for presenting federal court forms and all supporting documentation to the U.S. Magistrate [training day #6 (Phase 8) and training day #11 (Phase 10)]

D. Phase 4 (TD 3: 0930-1030)

Open a criminal case in (b)(7)(C) CM and upload the case summary.

Instructor Notes: FOTs will proceed to BREAKOUT ROOMS. (b)(7) training logins for each FOT are as follows:

(b)(7)(E)

To better manage this class, the student assigned to this phase will move to the instructor station while the remaining team members observe and assist from their desks.

A pre-written case summary is located on the student thumb drive. All students will make minor adjustments to fit their specific target, e.g., full name, A#, and training day dates; however, only the assigned team member will upload the summary into (b)(7) CM.

Once completed, conduct the Supervisory Approval (SA20) and verify for accuracy and completeness and approve. Provide FOT feedback and additional practice if needed. Time constraints may require the SA20 be conducted after-hours and feedback provided during the beginning of the next (b)(7) phase (Phase 5).

Each FOT member will need a copy of the case opening to place in 1st section of the file folder. **(Prosecution Case File Folder instruction will be given on Day 4 before next phase)**

- i. CM #79
 1. Open case (#1)
 2. Enter information relating to specific target to include correct dates
- ii. GOBY case opening SUMMARY
 1. Assigned thumb drives contain "goby" summary
 2. Each FOT will modify "goby" with reference to name, A# and dates
- iii. Supervisory Approval (SA20)
 1. Case opening to be reviewed and approved by CCS-C
 2. Report back to assigned FOT any errors found
- iv. Prosecution Case File Folder
 1. FOTs will receive instruction on Day 4
 2. Print (print screen) the entire case opening
 3. Place a copy in the Prosecution File Folder

ICE

ERO

Prosecutions

END BLOCK FIVE

REVIEW

- What does the Bail Reform Act require?
- Why would you want to get an Indictment prior to or within a few days of arrest?
- What is the purpose of the Grand Jury?
- How long do you have to obtain an indictment

PREVIEW

- Phase #18 / Day 13 – testify at PH/DH
- Phase #22 / Day 13 – testify at grand jury (P.E.)
- BLOCK 6 / Day 14 - arraignment to sentencing



U.S. Immigration
and Customs
Enforcement

ICE

ERO

Prosecutions

START BLOCK SIX

- As with admin arrests, a criminal arrest sets a process in motion that involves certain procedural steps
- Admin arrests often lead to IJ orders
- In the federal system, many cases are resolved through guilty pleas but some proceed to trial
- After guilt has been established and the sentence imposed, the conviction is documented in a J&C



U.S. Immigration
and Customs
Enforcement

ICE

ERO

Prosecutions

REVIEW

- Many procedures are required to be followed after a criminal arrest
- Various hearings occur after the arrest
- You understand the purpose of a federal grand jury and how it functions
- You have successfully testified at the DH/PH and before the GJ

Now you will successfully finish your case



U.S. Immigration
and Customs
Enforcement

ICE

ERO

Prosecutions

AGENDA

- BLOCK 6 / Day 14: EPO #2 and #3 –
FRCrmP – arraignment - trial prep - guilty
plea/trial - sentencing
- Review example federal court forms
- (b)(6),(b)(7)(C) plea agreement and J&C
- Day 14: Instruction from an SME – USPO
to discuss the sentencing process and the
federal sentencing guidelines



U.S. Immigration
and Customs
Enforcement

ICE

ERO

Prosecutions

Federal Court Procedures

- Occurs after the indictment or information is filed with the district court
- May be the IA of the defendant
- Consists of:
 - Ensuring the defendant has a copy
 - Reading the indictment/information or stating the substance of the charge
 - Asking the defendant to plead (generally “not guilty”)
- The defendant can waive his/her appearance



U.S. Immigration
and Customs
Enforcement

ICE

ERO

Prosecutions

Federal Court Procedures

- Necessary to support a finding that evidence is what it is claimed to be
- Evidence tags/receipts document when and where the evidence was discovered and who found it (DHS-6051 and I-44)
- Establishes where the evidence has been since discovery, as well as any alterations
- First entry on the chain of custody is the seizing officer



U.S. Immigration
and Customs
Enforcement

Federal Court Procedures

- Specific rules relate to the filing of motions
- Some motions may be made before trial
- Other motions must be made before trial:
 - A motion to suppress evidence
 - A Rule 16 motion for discovery
- The court may, at arraignment, or as soon as practicable, set a deadline for pretrial motions and schedule a hearing

** See 911 (b)(6),(b)(7)(C) Kansas motion to suppress
To be discussed further during Suppression
Hearings



ICE

ERO

Prosecutions

Federal Court Procedures

- The right of the defense and the government to learn what evidence the other party has
- There is a reciprocal right to discovery
- As a general rule, the government's discovery obligation involves providing the evidence to be used to prove the defendant's guilt or support a defense
- It is common that the discovery provided to the defense will be broader than that which is strictly required - and that the obligation of the defense is not as stringently enforced



U.S. Immigration
and Customs
Enforcement

ICE

ERO

Prosecutions

Federal Court Procedures

- The defense is entitled to disclosure of:
 - Statements made by the defendant
 - The defendant's prior criminal record
- The defense is entitled to inspect / copy / photograph:
 - Books, papers, documents, data, photos, tangible objects, buildings or places
 - Results of any physical or mental exam and any scientific test or experiment
 - Items included in the prosecution case file folder (and A-file)



U.S. Immigration
and Customs
Enforcement

ICE

ERO

Prosecutions

Federal Court Procedures

- If requested, the government is also required to provide a written summary of any testimony of an expert witness that is intended to be used at trial
- Rule 16 does not authorize the discovery or inspection of reports, memos, or other internal government documents [I-213?] made by a government attorney/agent in connection with investigating or prosecuting the case

**** Bottom line: It is YOUR responsibility to make advance copies and maintain orderly prosecution files**



U.S. Immigration
and Customs
Enforcement

E. Phase 5 (Day 3: 1030 – 1130)

Create an opening ROI in (b)(7)(C) CM and upload the case synopsis and narrative.

Instructor Notes: FOTs will proceed to BREAKOUT ROOMS.

Reminder: FOT members assigned to any TECS phase will move to the instructor station.

A pre-written ROI #1 is located on student thumb drive. All FOT members will need to make minor adjustments to fit their specific target, e.g., full name, A#, and training day dates. FOTs should also create a subject record (person and vehicle) to link to ROI. Ensure the case number is included in the record(s).

Time permitting, conduct the Supervisory Approval (SA10) and verify for accuracy and completeness and approve. Provide FOT feedback and additional practice if needed. If the SA10 is conducted after-hours, provide feedback during the beginning of the next TECS phase (Phase 6). Allow entire class to know of any issues and make corrections on main screen so that all have an opportunity to observe and learn.

Each FOT member will need a copy of ROI #1 and link list to place in Prosecution folder; however, lecture and practice will not occur until Day 4. **(MAY NEED TO FINISH ON TD 5)**

i. CM #83

1. Enter INITIAL ROI (ROI #1)
2. Enter information relating to your specific target to include correct dates
3. Create and link - a subject record for (b)(6),(b)(7)(C)
4. **OPTIONAL:** Create and link a subject record for (b)(6),(b)(7)(C) vehicle

ii. (b)(6),(C) ROI #1 SYNOPSIS and NARRATIVE

1. Thumb drives contain "goby" synopsis and narrative
2. Each FOT will modify "goby" with reference to name, A# and dates

iii. Supervisory Approval (SA10)

1. ROI to be reviewed and approved by CCS-C
2. Report back to assigned FOT any errors found

iv. Prosecution Case File Folder

1. FOTs will receive instruction on Day 4
2. Print (print screen) the entire ROI
3. Place a copy of ROI #1 to include link list for subject record(s) in their respective Prosecution File Folder

F. Phase 6 (TD 5: 0830-1000)

Create an interim ROI in (b)(7)(C) CM and upload the case synopsis and narrative.

Instructor Notes: FOTs will stay in BREAKOUT ROOMS

REMINDER: Upon completion of the REPORT WRITING Lab, the FOT member assigned to this phase must move to the instructor station. If not complete, first finish ROI #1 (Phase 5).

Refer students to Surveillance Notes contained in their PW, and remind that on TD 4, surveillance was conducted at the target location. A pre-written ROI #2 is located on the student thumb drive; however, each student has already modified ROI #2 to match their respective surveillance notes. **(NOTE: This may have been completed on Day 4 during Report Writing class).** The assigned FOT member should then enter ROI #2 in (b)(7)(C) CM, upload from their thumb drive, and link the subject records [Person and Vehicle] created in Phase 5.

Once completed or during after-hours, conduct SA10, verify for accuracy, completeness and approve. Provide feedback and additional practice when feasible.

The FOT's have received instruction on the prosecution case file folder, and should have already filed previously obtained documents. Check that each member has: updated Case Chron to include, at a minimum, date of lead, case acceptance, surveillance and all (b)(7)(C) CM entered; placed case opening in 1st section; placed ROI # 1 and #2 in 2nd section; placed all ICE docs in 4th section, placed outside agency docs in 5th sections; and, placed officer notes, fingerprints, and photos in the 6th section of the file folder.

ICE

ERO

Prosecutions

Federal Court Procedures

Discovery Process (FRCrimP 16)

- The district court has the authority to regulate discovery and the inspection of evidence
- Discuss with your AUSA what is needed and any deadlines involved
- Remember that USAOs in different districts have varying policies concerning their discovery obligations – How does it work in your district?

** What documents in your (b)(6),(b)(7)(C) prosecution file would you have to provide to the USAO?



U.S. Immigration
and Customs
Enforcement

ICE

ERO

Prosecutions

Federal Court Procedures

- Exculpatory evidence must be provided to the defense; i.e., the government must provide any evidence favorable to an accused, such as:
 - that indicating another person may have committed the charged offense,
 - that indicating the defendant did not, or
 - which supports an alibi / affirmative defense
- Covers any evidence that is favorable to include that which can be used to lessen any punishment
- Failure of the prosecution to comply with its discovery obligations can have serious and sometimes disastrous consequences

** EX: (b)(6), (b)(7)(C) case



U.S. Immigration
and Customs
Enforcement

ICE

**ERO
Prosecutions**

United States v Muhammad

Continuance granted in drug smuggling case

A federal judge granted a continuance Wednesday in the drug smuggling case of former entertainment promoter Rashad Muhammad.

With jury selection set to begin, Muhammad's attorney asked for resolution in two brothers' related cases before moving forward. Gary and Damon Milford faced a jury with Muhammad last month, but that case ended in mistrial.

Prosecutors in the marijuana smuggling case failed to share key evidence with defense attorneys until after the trial started, a misstep so grave that the judge abruptly ended the case and made an assistant U.S. attorney apologize to jurors for wasting their time.

[The Post and Courier - June 2, 2011]



U.S. Immigration
and Customs
Enforcement

ICE

ERO

Prosecutions

Federal Court Procedures

GIGLIO (Giglio v. United States)

- As a result of the USSC decision, the prosecution must disclose to the defense information that can impeach or lessen the credibility of government witnesses
- Includes evidence that makes the witness less believable or contradicts something said
- Applies to federal officers/agents as well as others, e.g. informants and cooperators



U.S. Immigration
and Customs
Enforcement

ICE

ERO

Prosecutions

Federal Court Procedures

Includes:

- Payments or other benefits to the witness
- Plea or immunity agreements
- Prior and pending criminal charges
- Criminal convictions
- Instances of inconsistent statements
- Anything affecting the truthfulness or credibility of the witness
- A finding of lack of candor during an administrative inquiry
- Credible allegation of misconduct (OIA and OPR investigations)



U.S. Immigration
and Customs
Enforcement

ICE

ERO

Prosecutions

Federal Court Procedures

- You are obligated to disclose potential Giglio information to the AUSA so that a decision can be made concerning what information, if any, must be turned over to the defense
- Before it is turned over, such information concerning an officer/agent may be
 - Submitted to the court for an in camera inspection, and
 - A decision by the district judge as to whether it must be disclosed

** What information, if any, may be relevant in the (b)(6),(b)(7)(C) case?



U.S. Immigration
and Customs
Enforcement

ICE

ERO

Prosecutions

Federal Court Procedures

- The defense
 - identifies evidence it does not want presented to the jury
 - files a motion to suppress BEFORE TRIAL
 - USMJ or USDJ conducts SH
- The object is to exclude:
 - evidence such as confessions, incriminating comments or statements, and that seized during a vehicle stop, or
 - evidence found during the execution of a SW, e.g., documents, drugs, firearms, cash, photographs



U.S. Immigration
and Customs
Enforcement

ICE

ERO

Prosecutions

Federal Court Procedures

- Defense generally alleges that at least one constitutional violation led to an inadmissible confession or unlawful seizure
- EXCEPTION - FRCrMP 12(e)
 - defense demonstrates “good cause” for late filing
 - documentation providing the basis for the challenge was not received until shortly before the motion was filed
- Not all courts will allow as defendants are expected to inform counsel of pertinent facts and require attorney to properly investigate



U.S. Immigration
and Customs
Enforcement

ICE

ERO

Prosecutions

Federal Court Procedures

- Your responsibility is to assist with:
 - gathering the relevant facts
 - arranging for witness interviews
 - reviewing the government's response
 - testifying at the SH
- The SH -
 - Judicial officer NOT a jury
 - ♦ considers all of the testimony and evidence presented
 - ♦ decides whether challenged statements and/or evidentiary items will be admitted into evidence or suppressed



U.S. Immigration
and Customs
Enforcement

ICE

ERO

Prosecutions

Federal Court Procedures

- Confessions – 18 USC 3501(a)
 - ♦ The trial judge will determine any issue relating to voluntariness
 - ♦ If deemed to have been voluntarily made, it will be admitted but the jury will be permitted to hear relevant evidence on the voluntariness issue, and
 - ♦ The court shall instruct the jury to give such weight to the confession as the jury feels it deserves under all of the facts



U.S. Immigration
and Customs
Enforcement

- i. CM #83
 1. Enter INTERIM ROI (ROI #2)
 2. Enter information relating to your specific target to include related training dates
 3. Link subject record for (b)(6),(b)(7)
- ii. (b)(6),(b)(7) ROI #2 SYNOPSIS and NARRATIVE
 1. Thumb drives contain "goby" synopsis and narrative for ROI #2
 2. Use "surveillance notes" provided to modify the "goby" ROI with reference to date, time and results of surveillance
- iii. Supervisory Approval (SA10)
 1. ROI to be reviewed and approved by CCS-C
 2. Report back to assigned FOT any errors found
- iv. Prosecution Case File Folder
 1. Case Chronology and Review Form
 2. Print (print screen) the entire ROI
 3. Place a copy of ROI #2 to include subject record in respective Prosecution File Folder
 4. Place a copy of the "surveillance notes" in respective Prosecution File
 5. Ensure documents from phases 1-5 have been placed in the Prosecution File Folder.

G. Phase 7 (Day 5: 1000-1130)

Write an investigative report, create an interim ROI in (b)(7)(C) Case Management, and upload the case synopsis and narrative.

Instructor Notes: FOTs will proceed to BREAKOUT ROOMS

REMINDER: FOT member assigned to phase will move to the instructor station.

Refer students to the "victim interview notes" contained in their PW, and remind that on Day 4, HMC was telephonically interviewed. Each student has already drafted a MOI in WORD during the Report Writing lab. Use Phase 7 GOBY MOI to review and provide feedback to all FOT members.

The assigned FOT member should enter ROI #3 in (b)(7)(C) CM, upload their MOI from their thumb drive, and link the subject record [Person] created in Phase 5.

Once complete or during after-hours, conduct the Supervisory Approval (SA10), verify for accuracy and completeness, and approve. Provide FOT feedback, and provide additional practice if needed.

Have each FOT member: update Case Chron to include date of victim interview and date ROI #3 entered; print or copy ROI #3; place interview notes in the 6th section; and, place ROI #3 in the 2nd section of the file folder.

During phase or after-hours, the CCS-C should review each of their FOT's folders for accuracy and completeness. 1st section contains the up-to-date Case Chron and Case opening; 2nd section contains ROI #1, #2 and #3; 4th section contains the I-138, copy of A-file and DHIS records checks; 5th section contains the admin subpoena results, DMV printouts, NCIC results, and any other non-DHIS database results or reports; and, 6th section contains any officer notes, fingerprints and photos. Any feedback, to include corrections to order or placement of documents should be notated and provided to students.

- i. Write ROI #3 SYNOPSIS and NARRATIVE
 1. Use "victim interview notes" provided to write an MOI
 2. Save on thumb drive for upload onto ROI #3
- ii. CM #83
 1. Enter INTERIM ROI (ROI #3)
 2. Enter information relating to your specific target to include correct dates
 3. Link subject record for (b)(6),(b)(7)
- iii. Supervisory Approval (SA10)
 1. ROI to be reviewed and approved by CCS-C

Federal Court Procedures

REMEMBER:

- The fate of the government's case may rise or fall on the admission of the challenged evidence
- It is critically important that you work closely with your AUSA to ensure suppression issues are litigated as thoroughly and accurately as possible



ICE

ERO

Prosecutions

Federal Court Procedures

- The trial shall commence within 70 days:
 - from the public filing of the indictment or information, or
 - from the date the defendant appeared before a judicial officer of the court in which the charge is pending –
 - whichever date last occurs
- TIME EXCEPTIONS – delay resulting from:
 - pretrial motions
 - consideration by the court of a proposed plea agreement
 - absence of defendant or essential witness
 - defendant's mental incompetency or physical inability to stand trial



U.S. Immigration
and Customs
Enforcement

Federal Court Procedures

- Usually with a written plea agreement
- Drafted by AUSA [review (b)(6),(b)(7)(C)]
- The ERO officer:
 - may/may not be consulted
 - may testify or present facts providing a factual basis for the defendant's guilt
 - will not always be notified of the GPH



ICE

ERO

Prosecutions

Federal Court Procedures

- By jury – “pick 12”
- Non-jury – defendant waives, USAO consents and court approves
- A defendant’s rights at trial –
 - To a speedy, public trial with impartial jury
 - To be informed of the nature and cause of the accusation / charge
 - To have the assistance of counsel
 - To confront and cross-examine prosecution witnesses
 - To subpoena witnesses
 - To present evidence
 - To remain silent with no inference of guilt



U.S. Immigration
and Customs
Enforcement

ICE

ERO

Prosecutions

Federal Court Procedures

- The burden is on the government to prove a defendant's guilt BRD
- A trial will result in
 - A guilty verdict – jury decides the prosecution has met its burden
 - A not guilty verdict – jury decides the prosecution has not met its burden
 - Mistrial – ex: jury unable to reach verdict; prosecutorial misconduct
 - Some combination of the above



U.S. Immigration
and Customs
Enforcement

ICE

ERO

Prosecutions

Federal Court Procedures

- Prepared by a USPO upon completion of investigation
- Sets forth—
 - procedural status of the case
 - facts relating to the commission of the instant offense which may support a higher/lesser sentence through adjustments or enhancements
 - defendant's criminal history
 - defendant's personal information
 - any factors warranting a departure



U.S. Immigration
and Customs
Enforcement

ICE

ERO

Prosecutions

Federal Court Procedures

- You may be contacted for facts relating to the offense and the defendant.
Who knows the case better?
- USPO will send it to the AUSA and the defense attorney for review and objections
- The USPO will attempt to resolve any disputes
- The district judge will decide unresolved issues at the sentencing hearing



U.S. Immigration
and Customs
Enforcement

ICE

ERO

Prosecutions

Federal Court Procedures

- The sentencing judge is now permitted to arrive at a reasonable sentence
- Factors warranting a sentence outside the recommended range may result in a departure or variance, either upward or downward
- The judge is required to clearly set forth on the record the rationale for any sentence outside of the recommended range



U.S. Immigration
and Customs
Enforcement

Federal Court Procedures

- An appellate court reviews a challenged sentence for reasonableness
- The advisory system has had no impact on laws requiring mandatory minimum sentences
- After the SH, the USDJ signs the official record documenting the conviction and sentence that was imposed – the Judgment in a Criminal Case

****Review the**

(b)(6),(b)(7)(C)



U.S. Immigration
and Customs
Enforcement

ICE

**ERO
Prosecutions**

END BLOCK SIX

REVIEW

- What are some of the things the defense is entitled to disclosure of or to inspect, copy or photograph?
- What are you obligated to disclose to your AUSA?
- Generally, when must a motion to suppress be filed?

PREVIEW

- SME-USPO / Day 14
- BLOCK 7 / Day 15
- Summary of ERO Prosecutions , the CCS and the P.E.



U.S. Immigration
and Customs
Enforcement

2. Report back to assigned FOT any errors found
- iv. Prosecution Case File Folder
 1. Case Chronology and Review Form
 2. Print (print screen) the entire ROI
 3. Place a copy of ROI #3 to include subject record in their respective Prosecution File Folder
 4. Place a copy of the "victim interview notes" in their respective Prosecution File Folder

H. Phase 8: (Day 6: 0830-0930)

Prepare the following federal court documents: Application for SW, Criminal Complaint, SW and AW, supporting Affidavit, and supporting attachments.

Instructor Notes: FOTs will proceed to BREAKOUT ROOMS

The phase leader is responsible for assuring all forms are complete and accurate; however, each member will work on one of the forms. FOT member #4 completes affidavit and presents to the USMJ; therefore, all appropriate documents will be drafted in the name of FOT member #4. They are to use "surveillance notes" to assist in drafting the "description of place to be searched". **If unable to complete in 1 hour, extra time is allotted in Phase 9 to complete Phase 8.**

Use INSTRUCTOR (b)(6) to review and critique each of the above documents. The CCS-C Guide workbook contains an example of the order and number of copies for each of these documents. (2 sets of Attachments A - C are required). Provide FOT feedback regarding any mistakes or improvements to be made. FOTs SHOULD NOT SIGN THESE DOCUMENTS AS THEY WILL BE SIGNED DURING PHASE 10.

Prior to end of phase, reiterate ERO Prosecution EPO #2 - Coordination. The completed federal court documents should be forward to the AUSA for review. Either the AUSA or ERO officer will contact the USMJ to set the date/time/place to meet (Day 11). Once signed, the SW must be executed in 14 days; therefore, FOT's need to work on the ICEFOPLAN (Day 9) as well as making prior notifications, e.g., HSI, local PD, other ERO entities and USMS.

- i. Federal Court Forms
 1. Application for SW
 2. Criminal Complaint
 3. SW and AW
 4. Affidavit (attachment C)
 5. Supporting documents
 - a. Description of items to be seized (attachment A)
 - b. Description of place to be searched (attachment B)
- ii. GOBY forms on thumb drive
 1. Thumb drives contain required "goby" documents
 2. All FOT members will be assigned a form
 3. Modify "goby" documents with respect to your specific target to include address information and description of premises
- iii. FOT and CCS-C Coordinator Meeting
 1. Are all the federal court forms complete and accurate?
 2. Update Case Chronology and Review Form
 3. Discuss next steps to be taken

ICE

ERO
Prosecutions

START BLOCK SEVEN

- Whether it be an administrative or federal criminal charge, you need knowledge of the relevant law, components in the system, procedures and documents
- Over the last 3 weeks, you have learned and practiced what it takes to successfully prosecute on federal charges:
 - Recognizing an offense was committed
 - Coordinating with the agencies in the system
 - Understanding and following the proper procedures
 - Knowing what documents are involved
- You now know what is required to take a case from arrest to the imposition of sentence



U.S. Immigration
and Customs
Enforcement

ICE

ERO

Prosecutions

Summary

With the advent of VCAS and JCART teams and the expanding role of FOTs, you are now, more than ever, involved in the federal prosecution of target aliens.

You should now have a better understanding of the procedures that must be followed, to include the following



U.S. Immigration
and Customs
Enforcement

Gathering facts and assessing them for possible criminal violations

What are some of the facts you learned about
(b)(6),(b)(7)(C) and how did you use these facts to
determine that criminal offenses had occurred?



Presenting the case for prosecution

What were some of the points you made during your meeting with the AUSA?



ICE

ERO

Prosecutions

Providing continual documentation as the case develops, including all necessary reports

What was some of the information you received and how did you formally document that information?



U.S. Immigration
and Customs
Enforcement

Coordinating with essential entities in the federal criminal justice system

During the case with (b)(6),(b)(7)(C) what components in the system did you need to coordinate with, why did you do so, and how and at what point did you contact them?



Following the FRCrmP to a successful resolution of the case

What procedures did you have to follow in order to
convict (b)(6),(b)(7)(C)?



ICE

ERO

Prosecutions

Let's carry this forward - into the field

You have just completed an entire federal criminal prosecution, starting with a lead on a criminal alien and resulting in the imposition of sentence and the need to dispose of the evidence in the case.

You now have a complete and accurate prosecution case file folder along with a multitude of example documents and reports which will assist you when you conduct field operations.



U.S. Immigration
and Customs
Enforcement

ICE

ERO

Prosecutions

TAKE AWAYS

What are some common elements that you will need to be able to prove in an [8 USC] 1253(a), 1253(b), 1325(a) and/or [18 USC] 911 case?

What do you always want to have with you when bringing a new arrestee to the USMS?

What is the purpose of a detention hearing?

What documents are required to obtain a federal search warrant?



U.S. Immigration
and Customs
Enforcement

ICE

ERO

Prosecutions

The goal of this course -

To better prepare you to smoothly and successfully prosecute those aliens you will encounter who are in violation of federal law.

To be able to obtain a federal SW and coordinate, plan for and lead its execution.

To better prepare you to handle evidence, contraband and abandoned property that you will inevitably encounter when out in the field.

You should want – and work toward - a successful result for your efforts!!!



U.S. Immigration
and Customs
Enforcement

I. Phase 9: (Day 9: 0930 – 1130)
Develop an ICE Enforcement Operations plan.

Instructor Notes: FOTs will proceed to BREAKOUT ROOMS

This phase follows instruction on EXECUTION of WARRANTS, EVIDENCE and ICEEOPPLAN. Students have been instructed on roles FOT members take during AW/SW execution, and how to make assignments on the ops plan.

An FOW for TAMPICO is provided in PW, and should be used to assist in this phase. The maps and the ICE Use of Force Continuum handout are also provided in PW, and should be attached to the back of the ICEEOPPLAN. Each FOT members should be assigned the following roles: 1 TL, 1 EV, 3 ST, 2 AT/PT, 1 PH/SKETCH. Additional roles, e.g., inner perimeter, ATL or Tactical TL, Prisoner Transport and Shield Bearing Officer, should also be discussed and possibly included on the ICEEOPPLAN. [For further reference see Perimeter, Approach and Stacking, Breaching and Ballistic Shield, and Warrant Service Entry Tactics I.P.]

One RO will be chosen from the AT/PT. In addition, the AT/PT will assist the ST once that portion of the scenario is complete. The PH/SKETCH should take photograph upon discovery of evidence while completing the sketch. Report Assignments will be listed on the ICEEOPPLAN; however, these assignments may change based on phase leader assignments completed during the orientation.

Use INSTRUCTOR GOBY ICEEOPPLAN as a Lab assessment guide, and provide feedback regarding any mistakes or improvements to be made. Additionally, remind FOT that no matter how well written, the events, as they occur, may alter the plan. EX: FLEXIBILITY IS KEY.

Have each FOT member: update Case Chronology to include, at a minimum, date ICEEOPPLAN completed. Copies of the ICEEOPPLAN, FOW and supporting documents are not part of the prosecution case file folder for OPSEC reasons; however, for the students' benefit, they will all keep their respective plan as a (b)(6) for the field. The police notification LEO notes should be placed in the 6th section of the file folder.

- i. Basic Case Information
 1. Case number, type of operation, violations/charges, date/time/location
 2. Summary of Investigation
 3. Operational Objectives
 4. Suspect Information
- ii. Personnel Assignments
 1. Entry Team/Breacher – 8
 2. Arrest Team/Prisoner Transport/Radio Officer – 2
 3. Team Leader – 1
 4. Evidence Custodian – 1
 5. Photos/Sketch – 1 (assigned to same officer)
 6. Search Team – 3 plus the 2 reassigned from AT and the TL
 7. Additional Assignments for discussion
 - a. ATL and/or Tactics TL
 - b. Inner Perimeter
 - c. Shield Bearing Officer
 - d. Prisoner Transport
- iii. Report Assignments
 1. SPEAR/SIR
 2. ROI – MOI (Interview from Arrestee – Miranda Warnings)
 3. ROI – Execution of Warrant(s) Results
 4. INCIDENT REPORT (S/A/S)
- iv. FOT and CCS-Coordinator Meeting
 1. Has the FOT considered the elements of Safety, Legality, Surprise, Speed, and Simplicity?
 2. Are the nine basic sections of the ICEEOPPLAN completed?
 3. Discuss contacts and notifications to be made prior to the operation:
 - a. HSI
 - b. Local PD (Perimeter)

ICE

ERO

Prosecutions

QUESTIONS??

We are always available to you in Outlook

(b)(6),(b)(7)(C)

(b)(6),(b)(7)(C)



U.S. Immigration
and Customs
Enforcement

Federal Court Procedures

- Mandatory when first went into effect in 1987
- In 2005 the USSC in U.S. v. Booker decided that the guidelines violated the 6th Amendment
- As a result, they are now advisory; however, the sentencing judge is still required to calculate and consider a sentencing range



Federal Court Procedures

- Judge primarily focuses on two factors:
 - The conduct associated with the offense
 - ♦ Base Offense Level
 - ♦ Specific Offense Characteristics
 - ♦ Adjustments
 - ♦ Total Offense Level (1 to 43)
 - The defendant's criminal history
 - ♦ CHC – arrived at through a point system
 - ♦ The CHC is reflected as I through VI



ICE

ERO

Prosecutions

Federal Court Procedures

- The resulting TOL and CHC will result in a guideline range that is set forth in the ST
- That guideline range is set forth in months – ex: TOL of 22 and CHC of I results in a range of 41-51 months, while a TOL of 22 and CHC of VI yields a range of 84-105 months
- Under the advisory guidelines system now in effect a sentencing range is a recommendation for the judge to consider



U.S. Immigration
and Customs
Enforcement



U.S. Immigration and
Customs Enforcement

ICE
ACADEMY

ERO PHYSICAL EVIDENCE

What would you do?

You are a member of an ERO FOT, and, while on an operation, you encounter something...

maybe it is evidence of a crime, contraband or just illegally possessed.....

maybe you saw it in plain view, during a consensual search, or warrant execution.....

maybe you were working CAP and found it in a detainee's property.....

evidence, contraband, fruits of a crime....whatever.....

WHO ARE YOU GOING TO CALL?

HSI, DEA, ATF, Locals....no one!!!



ERO HAS SEIZURE AUTHORITY

It does not matter if criminal prosecution is being contemplated.

Certain items must be seized or at least temporarily detained....and YOU have the authority and the means to do this, but.....

this will expose you to a high level of risk of civil and criminal liability.....

so it is extremely important that you know how

legally and correctly to not only protect your case, but **YOU!!!**



Goal of the Lesson

Condition: Given a field situation in which a SW has been executed, and a search for physical evidence has been initiated,

Behavior: the ERO officer will secure and dispose of evidence;

Criterion: in accordance with the FRCrmP, FRE and ICE policy and procedures.



How We Achieve the Goal

EPO #1: Recognize the type and likely manner in which evidence may be encountered.

EPO #2: Initiate and maintain a chain of custody on evidence.

EPO #3: Package, transport and store evidence.

EPO #4: Request laboratory examination of evidence.

EPO #5: Record evidence in (b)(7)(E).

EPO #6: Properly dispose of evidence.



EVIDENCE

Something that furnishes proof

Offered in court to prove or disprove a fact, e.g., an element of the crime, a defense, or credibility of a witness.

Physical or Real Evidence: (LESSON FOCUS)

A material object. ex: ID, money, firearm or drugs

Testimonial Evidence:

ex: victim's account of being attacked (HMC could testify)

Documentary Evidence:

ex: FDL report



CONTROL PAGE

Developed By:

April 2011

(b)(6),(b)(7)(C)

Signature

Content Approved By:

(b)(6),(b)(7)(C) Branch Chief, Advanced Training Section, ERO Academy

(b)(6),(b)(7)(C) Branch Chief, Advanced Training Section, ERO Academy

Signature

Signature

Instructional Design Reviewed By:

(b)(6),(b)(7)(C) Instructional Designer, OTD-IMU

(b)(6),(b)(7)(C) Instructional Designer, OTD-IMU

Signature

Signature

This document is not to be released outside the Office of Training and Development or the ICE Academy without the written permission of ICE Office of Training and Development Director or his designee.

- c. Other ERO Components
 - 4. Review, approve, and report back any errors found
- v. Prosecution Case File Folder
 - 1. Case Chronology and Review Form
 - 2. Place NCPD notes in their respective Prosecution File Folder

J. Phase 10: (Day 11: 0730 - 1030)

Present the Criminal Complaint, Application for SW, Arrest and Search Warrants to the USMJ to obtain signatures.

Instructor Notes: FOTs will proceed to BREAKOUT ROOMS

Phases 11 and 12 are being conducted simultaneously with Phase 10 during a 3 hour block. Each FOT will have 1 hour to complete Phase 10, while the other FOTs are completing Phases 11 and 12.

Accompany the FOT to the USMJ as an "observer". One FOT member will present while the others observe.

Use the PHASE 10 INSTRUCTOR ASSESSMENT CHECKLIST for feedback regarding any mistakes or improvements to be made.

Have each FOT member: update Case Chronology to include, at a minimum, date federal court documents presented and signed before USMJ; and, place copies of these SIGNED documents in the 3rd section of the file folder.

LEGAL INSTRUCTOR: REMIND STUDENTS the ORIGINAL SIGNED Complaint, Affidavit, and AW will be filed with the Court, and generally the AW goes to the USMS. FOTs will receive a COPY. The ORIGINAL SIGNED SW Application and all attachments will generally be retained by the USMJ with the ORIGINAL SIGNED SW being provided to the case agent. FOT members will place a COPY of the documents in their file folder, and TLs are expected to bring the ORIGINAL SIGNED SW with them on Day 12 (Phases 13 / 14).

- i. FOT, CCS-C and AUSA Meeting
 - 1. Review the court documents prepared in Phase 8
 - 2. Prepare for oral presentation to the USMJ
- ii. Presentation
 - 1. One team member will present while the remaining team members and CCS-C observe
 - 2. Presenting officer will use his/her copy of the court documents for this phase
 - 3. LEGAL Instructor / CCS-C will critique the student's presentation
- iii. Prosecution Case File Folder
 - 1. Case Chronology and Review Form
 - 2. Place a copy of all federal court documents in their respective Prosecution File Folder

K. Phase 11: (Day 11: 0730 - 1030)

Prepare a Significant Prospective Enforcement Activity Report.

Instructor Notes: FOTs will proceed to BREAKOUT ROOMS

Phases 10 and 12 are also being conducted during this time.

Use Instructor (b)(6),(b)(7) and checklist as a guide to provide FOT feedback regarding any mistakes or improvements to be made.

Have EACH FOT member: update Case Chronology to include, at a minimum, date (b)(6) completed; and, print or copy and place (b)(6), in 4th section of the file folder.

- i. Write (b)(6),(b)(7)
 - 1. Thumb drive contains pre-filled (b)(6),(b)(7) template and draft narrative
 - 2. Use information from previous phases to complete the draft (b)(6),(b)(7) narrative
 - 3. Purpose is to report on the potential enforcement action, i.e., the

SEIZURE vs. DETENTION

SEIZURE: Gov interferes with possessory right or interest. Taking physical possession and/or control of property. (6051S)

DETENTION: withholding release of property pending a decision to seize. (6051D)

Property may be seized/detained as evidence (admin or criminal) and/or contraband, or as other forfeitable property.

DRUG EX: always contraband but may also be seized as evidence. Without Title 21 authority, ERO could **DETAIN** pending testing and seizure by other agency.



FORFEITURE (18 USC 981/982)

Based on criminal, civil, or administrative statutory authority, the title of seized property is transferred to the U.S. through judicial or administrative process.

– Purpose of Forfeiture:

- Fruits
- Contraband
- Instrumentalities

**** DRO/OI Protocols Memo – ERO doesn't have an agreement with CBP/FPF**



Forfeitable v. Non-forfeitable

Must be a statutory provision for the forfeiture

- Value – is it worth taking?
- Is it in the best interest of the government?
- Was it wrongfully used or acquired?
- Deny instruments or profits of criminal activity?
- Exact penalty against property?

Non-forfeitable – property seized for evidence only and MAY be returned to rightful owner. EX: ID

Forfeitable – property seized for evidence subject to forfeiture (statutory provision). EX: firearm or drugs



CONTRABAND

Merchandise unlawful to import, export,
possess (always forfeitable but not
always evidence)

** HSI HB 10/05, August 18, 2010

ABANDONED PROPERTY

Voluntary, not lost or stolen

** DHS Form 4607 – Can you abandon something if you are
not claiming ownership?



ICE ERO Detention Standards:

Rules for alien funds, personal property and contraband

These ERO procedures include:

- Inventory
- Witnessing Officer
- Packaging (envelope or tag)
- Storage
- Logbook
- Audit
- Updates to logs and receipts
- Return or destroy

The procedures for evidence are very similar as you will learn today.



WHAT WE WILL DO

- Review types of evidence
- Introduce the ICE “chain of custody” form
- Discuss evidence packaging
- Review the role of the EV and rules about transporting, securing and storing
- Discuss FDL and outside labs
- Demonstrate property entry and I-44 tab
- Pre-practice: TD 9
- Practice: CCS Phases 14 and 19
- Discuss ways to request/record evidence disposal
- Practice: CCS Phase 24
- Final Test of Activity: Days 14 and 15



WHAT WE COMMONLY ENCOUNTER

US GOVT ID's	FOREIGN ID's	CONTRABAND	MISC
STATE ID or DL	Birth Certificate	Drugs ****Warning	Cash/ Money
Birth Certificate	Passport	Firearm and Ammo ****Warning	Work ID
Social Security Card	Cedula/ National ID	Document - making Equipment	Pay Stubs



HOW WE ENCOUNTER IT

- SW
- Arrest (Criminal and/or Administrative)
 - SIA
 - Inventory
- Consent Search
- MISC
 - Plain View
 - Trash Run
 - Subpoena
 - Grand Jury
 - Administrative

****Regardless of HOW encountered, you WILL document it****

****See copies of evidence in your PW****



FRE RULE 901(a)

Requirement of authentication and identification

- Before being admitted in court, there must be sufficient showing it is what it's claimed to be
- NO guidance on how it should be collected or maintained.....therefore the following are important:
 - Begin COC when item found
 - Document any further handling of and alterations
 - Unmarked, mismarked or incomplete tags, bags or boxes can lead to a challenge
 - Transfer of evidence not recorded on COC can lead to a challenge



DHS FORM 6051S

Custody Receipt for Seized Property and Evidence

- Where, when and by whom found
- Where and who handled it from initial discovery until offered in court or no longer needed
- Do NOT list forfeitable and non-forfeitable evidence together
- Has a unique serial number and multiple carbon copies



- potential execution of the AW and SW at (b)(6),(b)(7)(residence
- ii. CCS-C Approval
 - 1. (b)(6),(7) to be reviewed and approved by CCS-C
 - 2. Report back to assigned FOT any errors found
- iii. Prosecution Case File Folder
 - 1. Case Chronology and Review Form
 - 2. Place a copy of the (b)(6),(b)(7) in their respective Prosecution File Folder

L. Phase 12: (Day 11: 0730 – 1030)

Conduct a final team briefing of the ICE Enforcement Ops Plan to include the tactical team approach.

Instructor Notes: FOTs will proceed to BREAKOUT ROOMS. Because this LAB requires FOTs to practice not only what was taught during EXECUTION and ICEEOPPLAN LP but also APPROACH and STACKING, a TI must also be present for each FOT briefing.

Because phases 10/11 are also being conducted during this time some of the FOTs will not have their court documents signed by the USMJ, but should proceed through this phase as if the AW/SW have been issued. Explain these would normally be signed prior to the pre-op briefing, but may not be due to CCS time constraints.

Each FOT member should have their respective copy of the Court Documents (Phase 8), ICEEOPPLAN, FOW and attachments (Phase 9). FOTP-P coordinator will provide each CCS-C with their respective RP photo which should then be provided to your FOT.

As previously mentioned in Phase 9, there are certain assignments that are expected to be made [ICEEOPPLAN LP]. Additional roles, e.g., inner perimeter, ATL or Tactical TL and Shield Bearing Officer [taught during Perimeter, Approach and Stacking, Breaching and Ballistic Shield, and Warrant Service Entry Tactics], should be discussed as these roles may have been included on the FOTs plan. OPTION: Briefing officer, or assigned Tactics TL, may also create an approach plan that would then be briefed.

The Phase 12 leader is not the "TL" for the operation, as someone else has been assigned. For this operation, NCPD was notified Day 9 and has agreed to participate as outer perimeter. Typically, all LEOs participating in an operation must attend the pre-op briefing; however, no role players will be used today.

HANDOUT: 7 questions are located in the Phase 12 folder of the Instructor GOBY folder for DFOTPP. These questions should be passed out to the 7 FOT members observing the briefing. Instruct the students to ask the question, if the issue is not properly addressed, after the briefing.

Use INSTRUCTOR ASSESSMENT CHECKLIST for ICEEOPPLAN briefing assessment guide and provide FOT feedback regarding any mistakes or improvements to be made.

- i. One member will brief the rest of the FOT on the basic case information using the FOW and ICEEOPPLAN (phase 9)
 - 1. Summary of Investigation
 - 2. Operational Objectives
 - 3. Suspect Information
- ii. Entire FOT will know and understand their assignments
 - 1. Entry Team/Breacher – all 8
 - 2. Arrest Team/Prisoner Transport/Radio Officer – 2
 - 3. Team Leader – 1
 - 4. Evidence Custodian – 1
 - 5. Photo/Sketch Officer - 1
 - 6. Search Team – 3 plus the 2 (reassigned from AT) and the TL
 - 7. Additional Assignments for discussion
 - a. ATL and/or Tactics TL
 - b. Inner Perimeter
 - c. Shield Bearing Officer
 - d. Prisoner Transport
- iii. Review ICE Use of Force policy
- iv. Radio Officer

PACKAGING EVIDENCE

Documents what, who, witness, date and location

PACKAGE TYPES

- DHS Form 366 and 366A (Tags/Labels)
 - Placed on bulky evidence (computers)
 - Placed on non-ICE evidence boxes / bags
- BAGS – IDs, paperwork, \$
- BOXES – bulky records, firearms

****See examples in PW and Evidence Kit**



PRE-PRINTED FIELDS

Correspond with 6051 and S/A/S

- Computer-generated #'s go on both 6051 and bag/tag
- Each 6051 has a unique serial number which goes on the bag/tag
- Order of items must match S/A/S
- Seized items of a similar nature (Ex: 2 Puerto Rican birth certificates) may be listed as a SINGLE line item

**If ERO enters in S/A/S above apply



HIGH RISK

- Firearms/Ammo
 - Render safe/inoperable (separate ammo)
 - ATF/NCIC/ (b)(7)(E) checks
 - Policy (see Thumb Drive)
 - 3/09 ERO Tasking
 - ERO 11156.1 Property Protocols
- Currency
 - Bulk photograph
 - DHS Form 4605 (see evidence kit)
 - Seal bag
- Controlled Substances
 - Bulk photograph and weigh
 - Always call HSI or DEA



SPECIAL TRANSPORT RULES

- At least (b)(7)
(E) armed officers
- Cell phone, radio and body armor
- Notify SECTOR
- Either TOT or transport to Seized Property Specialist (SPS) within 3 calendar days



STORAGE

Secure vault or special room with limited access

Rules established by the Security Management Branch

KEY: in order to maintain the COC, access must be limited and controlled

MUST:

- Attempt TOT HSI or OA
- Store in accordance with CBP/ICE policies



STORAGE

Evidence Custodian

- Assures evidence is properly packaged
 - sealed (with evidence tape)
 - initialed and dated along sealing tape
 - completed evidence label on each package
 - original 6051 with evidence
- Controls access to evidence
 - accompanies the officer inside the evidence room/vault
 - maintains logbook (CF 6025)
- Maintains integrity and accountability

****See example in PW and on Thumb drive**



FDL

Review

- Forensic Section:
 - Fingerprint exam
 - Handwriting analysis and comparisons
 - Document exam
 - Expert Witness testimony
- ICE Form 73-003
- How is it sent?

**See example in PW and on Thumb drive



OUTSIDE LAB

- Federal vs. State/Local
 - State/local lab, DEA lab, USSS forensics
 - Closer or faster
- Letter (Form) of transmittal
 - When requesting analysis/examination, include:
 - name, agency, contact information
 - type of examination being requested
 - where evidence and report are to be returned
 - urgency of request
 - Check first to see if they have their own form and/or COC form



LAB

- 2-man STs
- All SW documentation completed (6051s, room identification forms, etc)
- Properly completed evidence bags/ tags that mirror 6051s
- Proper transport
- Proper storage (HSI DECLINES!!)



END OF BLOCK ONE

REVIEW

- When will you encounter evidence?
- What is the ICE chain of custody form?
- How do you package evidence?
- What is the key to properly storing evidence?

PREVIEW

- TD 9 – Pre-practice searching/seizing in MCR
- Phase 14 – Execute SW and seize evidence
- EPO #5 – Evidence Disposal
- Phase 24 – Dispose of (b)(6),(b)(7)(C) evidence



1. ICEEOPLAN lists TAC channel for each FOT
2. TI will act as SECTOR using same TAC channel as FOT
 - a. Contact SECTOR before and after operation
 - b. Contact SECTOR for any records checks during operation
- v. Discuss what contacts and notifications are to be made prior to the operation:
 1. HSI
 2. NCPD
 - a. Contacted on Day 9
 - b. Present at briefing
 - c. Will conduct pre-operation surveillance and establish perimeter
 3. Other ERO components

Instructor Notes: RII SETUP Day 11 1630

Upon completion of TD, assigned CCS-C and TI will be required to setup RH for Day 12 practice (Phases 13-14). Evidence should be hidden as follows:

- BC/SSN Nightstand, master bedroom
- CR ID – Middle Kitchen Drawer
- SC DL Jeans pocket hanging in master bedroom closet

M. Phase 13: (Day 12: 0730 – 1130)

Execute arrest and search warrants; gather and identify other occupants; and, locate and arrest target.

Instructor Notes: FOTs, along with their CCS-C, will begin in their respective BREAKOUT ROOMS. 2 ICE certified tactics instructors should be in position at their assigned RH. A legal instructor should also be available to float between the 3 RH's.

For each location, the assigned instructors will position themselves so that all areas of the RH can be observed. Instructors will need to observe and assess all elements of Phases 13-14 as described below. TIs' primary focus of assessment is tactics, while CCS-Cs' primary focus are rules and procedures; however, all instructors can contribute to the overall debrief.

TIs act as SECTOR and should pick up radio before going to the RH. CCS-C will provide FOT with 8 radios. NCPD has conducted pre-op surveillance and established outer perimeter; no further info has been obtained. TI should bring original signed SW and extra copy(s) to leave, as well as copy of AW.

Upon entry, FOT should conduct sweep to secure the premises. Neighbor (RP #2) will first be encountered and later (b)(6),(b)(7)(F) AT should detain the RP's in a central location. If ET/AT handcuffs neighbor, have them articulate reason. (b)(6),(b)(7)(F) should be properly secured (POA/POD/SIA). Records checks conducted on the neighbor will return "negative" for NCIC wants/warrants. Upon advising TI, AT should escort neighbor from residence, at which time RP #2 will go "out of role".

Upon identifying (b)(6),(b)(7)(F) FOT should follow arrest procedures described in 8 CFR 287.8. AT should complete booking paperwork and attempt to take statement (b)(6),(b)(7)(F) will not waive Miranda. NOTE: CCS-C should have the appropriate 3x5 card containing (b)(6),(b)(7)(F) information in the event RP cannot recall answers. Upon advising TI they are finished, AT should escort RP to transport vehicle, at which time RP will go "out of role". AT should proceed back to RII for Phase 14.

If FOT fails to remove RP's from the premises, call "out of role" to explain why RP's are no longer needed.

AT may still be dealing with RPs while the remaining FOT members transition into phase 14. TI, EV and PH/SK may begin the Pre-search walk-through. As/after (b)(6),(b)(7)(F) and/or neighbor are being/has been escorted from the residence, the search for evidence may begin.

All assessments, critiques, comments, to include tactics, will be made at the end of phase 14 using checklist.

- i. Pre-operation stage
 1. Equipment check
 - a. Evidence Kit
 - b. Duty Gear, to include radio

START OF BLOCK TWO

REVIEW

- Rules on evidence are very similar to those of alien property
- You have already practiced locating, seizing, packaging, transporting and storing evidence

TODAY

- Joe ALIEN was in possession of a firearm and fraudulent I-55
- These need to be documented in (b)(7)(E)
 - Firearm and I-551 are entered on property tab
 - Two separate I-44s and completed – ATF and HELD



END OF BLOCK TWO

REVIEW

- When will you encounter evidence?
- What is the ICE chain of custody form?
- How do you package evidence?
- What is the key to properly storing evidence?

PREVIEW

- TD 9 – Pre-practice searching/seizing in MCR
- Phase 14 – Execute SW and seize evidence
- EPO #5 – Evidence Disposal
- Phase 24 – Dispose of (b)(6),(b)(7)(C) evidence



START OF BLOCK THREE

REVIEW

- Rules on evidence are very similar to those of alien property
- You have already practiced locating, seizing, packaging, transporting and storing evidence

TODAY

- (b)(6),(b)(7)(C) will be convicted on Day 14
- What do we do with those identity documents?
- Phase #24 – Evidence Disposal



EVIDENCE RETENTION

UNTIL:

- TRIAL
- APPEALS COMPLETED
- EXCEPTIONS
 - Defendant becomes fugitive
 - Rule 41 (Court order to return)



DISPOSAL

You won't hold it forever

- Administrative Forfeiture (FPF rules)
 - < \$500,000
 - Exceptions include drug conveyance and monetary instruments
- Judicial Forfeiture
 - > \$500,000 (exceptions above)
 - REAL Property
 - ERO – fruits, contraband, instrumentalities
- Non-forfeitable Items
 - Evidentiary only
 - May be returned
 - NEVER return fraudulent IDs



ABANDONED PROPERTY

- DHS Form 4607
 - May still require forfeiture order

OR

- Cannot return to possessor
 - Destroy
 - Return to actual owner
 - Return to issuing agency, e.g., social security card, birth certificate, foreign passport



RULES

- Obtain AUSA/Supervisor approval
 - Memo to File
 - Return or Destroy
- Destroy in presence of witness (EV)
- Obtain signatures of supervisor and witness
- Original to case folder and copy to EV

**See example in PW and on Thumb drive



PRACTICE

Phase 24

- Dispose of evidence
 - Birth Certificate
 - Social Security Card
 - Drivers License
 - Passport



Final Test of Activity

Day 14/15

- Will not be part of your current scenario
- You will execute a SW and seize evidence
- Each FOT will properly complete a 6051
- Each FOT will properly package the evidence



Summary

Your duties now include the execution of criminal
AW and SW

You are now being exposed to a high level of risk

It is imperative that you understand the importance
of initiating and maintaining a chain of custody, as
well as packaging, transporting and storing items

Proper disposition of seized and abandoned items
can prevent allegations of impropriety



- c. Vehicle
- 2. Paperwork
 - a. Court documents
 - b. ICEEOPLAN
- ii. Entire FOT(ET/BR) will make entry.
 - 1. Notify Sector .
 - 2. Approach
 - 3. 18 USC 3109 – Knock, announce, and demand entry
 - 4. Security Sweep
 - a. Gain control of people
 - b. Secure all weapons seen in plain view
 - c. Secure premises
- iii. Control occupants (AT)
 - 1. Bring all occupants to a central location .
 - 2. Identify and run checks on occupants
 - a. Should anyone be arrested?
 - b. Should anyone be allowed to leave?
- iv. Identify and arrest target (8 CFR 287.8)
 - 1. Identify self as ICE officer
 - 2. Advise target is under arrest and why
 - a. Booking process
 - i. USM312 / Scratch I-213
 - ii. Children, Medicine, Passport
 - b. Miranda; if waived, take sworn statement
 - 3. Prisoner Transport
 - a. Advise TL target is ready for PT
 - b. Notify Sector

N. Phase 14: (Day 12: 0730 – 1130)

Conduct a search and locate and seize evidence; initiate chain of custody; and, package, transport and secure evidence.

Instructor Notes: Reminder: Phase 14 requires observation by all 3 instructors.

ST should locate the following evidence: CR ID, TX BC, SC DI, and SSN card. ST should call EV to collect evidence, establish and maintain chain of custody, and transport back to breakout room. During post-search walk-through, TL should notate the date/time of execution on SW, prepare and verify inventory of items seized, and leave copy of SW as well as receipt for property taken at residence. TL should list two other officer's names on the SW as witnesses, preferably the EV and PH/SK. Prior to calling the scene secure, TL should verify no injuries, no equipment or additional documents left, and should notify Sector that team is/has departed premises.

De-brief at RH: Once TL has called the scene secure, instructors will conduct a de-brief before heading back to the classroom. Use the Phase 13-14 and P.E. Checklist located at OAFRO Lesson Plans\FOTP-Pvd - CCS Instructor **(b)(6)** materials\CCS Phase 14. The TIs' primary focus of assessment is tactics, while CCS-Cs' primary focus are rules and procedures; however, all instructors can contribute to the overall debrief.

Post-operation briefing at breakout room: Provide "mock" CD of SW photos in sealed evidence bag (maintained in the MCR). Copies of Day 12 I-213, I-247, FD-249 and 6051S for the CD of SW photos have already been provided in student PW. The Day 12 I-213, I-247 and FD-249 are administrative paperwork, and the originals are filed in the A-file. A copy of the I-247 has been filed with USMS. Explain that it would be the case agent's responsibility to download the photos onto a CD and complete a 6051S; however, due to time constraints, this has already been done for them.

TAKEAWAYS

- Recognizing evidence
- Initiating and maintaining a COC
- Packaging, transporting, securing and storing evidence
- Requesting laboratory examination
- Disposing of evidence



PROTECT YOURSELF

- As an FOT member, you will inevitably be involved in seizures of evidence, contraband and property.
- You are responsible for following ICE policy and procedures, and respecting the legal rights that are owed to all persons.
- Following these procedures, as perfected by CBP and ICE HSI, will decrease your chances of being the target of any civil or criminal action, and increase the chance of having a successful case.



QUESTIONS?



Instructor Notes: CONT.

TL will collect equipment, officer notes, sketches, logs, and forms. EV will finalize the packaging of evidence, e.g., verify what is listed on and in each bag matches each 6051S, seal each bag, and attach original 6051S to appropriate bag. EV/TL will complete the evidence logbook, enter the evidence room (ICE supply room combo is (B)(7)(E)), and place in a locker. In the field, the EV and/or Case Agent will also need to copy the evidence before sealing; however, due to time constraints, this will not be required in the CCS.

NOTE: Each FOT member will need to obtain copies of the SW documents created during Phases 13 and 14.

- i. Continuation from Phase 13
 1. FOT will transition to roles of ST, EV, PH/SK, etc
 2. Pre-search walk-through by TL, EV, PH/SK
 - a. Post "room identification" forms
 - b. Pre-search photos
 - c. Sketch the raid house
 3. Detailed search by ST
 - a. Complete top portion of "room identification" forms
 - b. Announce evidence discovery to TL, EV and PH
 - c. PH will photo evidence in place and complete photo log
 - d. EV will collect evidence
 - e. Complete bottom portion of "room identification" forms once room has been thoroughly searched
- ii. EV specific responsibilities at search location
 1. Initiate chain of custody (6051S)
 2. Package evidence using ICE evidence bags, tags or boxes
 3. Assist TL in preparing inventory of items seized
 4. Coordinate transportation of evidence back to ICE office for storage
- iii. Final operation procedures at premises (TL)
 1. Make appropriate contacts
 - a. AUSA
 - b. USMJ or Clerk of Courts
 - c. USMS – advise prisoner en route
 2. Execute SW paperwork
 - a. Record date and time
 - b. Prepare and verify an inventory
 - i. Properly witnessed by a 2nd LEO and person from whom property seized; or,
 - ii. Witnessed by a third LEO if person from whom property is seized is not present
 3. Post-search walk-through by TL and PH
 - a. Post-search photos
 - b. Leave copy of warrant and receipt of items seized
 - i. With person from whom seized; or,
 - ii. At place where property taken
 - c. Secure premises
- iv. Post-operation briefing upon return to local office (Breakout rooms)
 1. Gather notes, paperwork, equipment, 6051s and evidence (TL)
 2. Event has been entered into ENFORCE by IEA Smith
 - a. Day 12 I-247, I-213 and FD-249
 - b. Administrative paperwork which belongs in the A-file
 3. Photographs have been downloaded by CCS-C
 - a. Appropriately labeled and bagged CD containing photos
 - b. Completed 6051S listing the CD
 4. Evidence storage (EV and TL/case agent)
 - a. Sign in and out of evidence room (logbook)

- b. Store evidence and CD in locker
5. Copies of 6051s, officer notes, sketch, photo log, room identification forms, I-247, I-213 and FD-249 filed in Prosecution Case File Folder
6. FOT member feedback and critique

Instructor Notes: TD 12 1230 - 1630

From 1230-1330, FOTs received instruction re: EPO #3 of the ERO Prosecution I.P. They have been advised that (b)(6),(b)(7)(E) was transported to the USMS, appeared before the USMJ, and ordered into USMS custody. An ICE detainer was lodged and an initial event created in (b)(7)(E). FOTs were provided with the "MOCK" I-213, I-247, and FD-249 in their course materials, which should have placed in their (b)(6),(b)(7) A-file or prosecution case file folder.

From 1330 - 1530, FOTs received (b)(7)(E) CM instruction re: EPO #4 (Incident Report, Case Stats and Hours). They are instructed not to enter the seized property as an "SZ" or "SA" report in (b)(7)(E) due to the lack of relationship with CBP FPF; rather, they are to use the EABM Property Tab to log the seized property.

SEIZURE REPORTING and ENFORCE SCREEN SHOTS

From 1530 - 1630, FOTs received EVIDENCE instruction re: screen shots of the EABM Property Tab entries for the items seized during Phases 13-14. These screen shots are contained on the student thumb drive located at: O:\ERO Lesson Plans\FOTP-Pie - Student Thumb Drive\Day 2\3 (b)(7)(E).

OPTIONAL: At 1630, Legal instructor may meet with FOT members' assigned phases 18/22 to prepare for

O. Phase 15: (Day 13: 0730 - 1130)

Create an Incident Report in (b)(7)(E) Case Management and upload the narrative.

Instructor Notes: For Phases 15 - 20, FOTs will proceed to their respective BREAKOUT ROOMS.

Phases 16-20 are being conducted simultaneously with Phase 15 during a 4 hour block.

During Phase 15, an "Arrest" incident report will be entered into CM83 #2. FOT should modify the (b)(6) incident report found on thumb drive. The narratives will be uploaded into (b)(7)(E) and the subject record will be linked.

Once each FOT completes these phases, conduct the Supervisory Approval (SA10) and verify for accuracy and completeness and approve. Provide FOT feedback and provide additional practice if needed.

Have EACH FOT member: update Case Chronology to include, at a minimum, date and results of SW/AW execution, date and results of IA, date Incident Report entered; print or copy Arrest Report; place the evidence 6051s and Incident Report in the 4th section of the file folder; and, place the officer notes, sketches, photo log, and room identification forms in the 6th section of the file folder. The Day 12 I-247, I-213 and FD-249 would be placed in the A-file with a copy in prosecution folder. The fingerprints will be needed for FDL analysis.

- i. CM #83 #2
 1. Enter INCIDENT (S/A/S) using Fiscal Year and violator number "01"
 2. Enter information relating to your specific target to include related training dates
 3. Do not forget to enter CASE number so that the incident (arrest) report is attached to the (b)(7)(E) case
 4. Link subject record for (b)(6),(b)(7)
- ii. (b)(6),(b)(7) NARRATIVE
 1. Thumb drives contain "goby" narrative for the Incident (arrest) report
 2. Use officer notes and booking forms to complete the narrative
- iii. Supervisory Approval (SA10)
 1. Incident report to be reviewed and approved by CCS-C
 2. Report back to assigned FOT any errors found
- iv. Prosecution Case File Folder
 1. Case Chronology and Review Form
 2. Print (print screen) the entire INCIDENT report

3. Place a copy of the INCIDENT report in their respective Prosecution File Folder
- v. Review Stats
 1. CM 81#1 – Enter Case Statistics
 2. Enter case number and select (b)(6), (b)(7) subject record
 3. Observe that an “AR” stat has already been approved

P. Phase 16: (Day 13: 0730 - 1130)

Create an interim ROI in (b)(7)(C) Case Management and upload the case synopsis and narrative.

Instructor Notes: For Phases 15 - 20, FOTs will proceed to their respective BREAKOUT ROOMS.

Phases 15 and 17-20 are being conducted simultaneously with Phase 16 during a 4 hour block.

ROI #4 narrative and synopsis is located on thumb drive. and should be modified and uploaded into CM 83 #1. (b)(6), (b)(7)(C) subject record should be linked. Conduct SA10 and verify for accuracy and completeness and approve. Provide feedback and additional practice if needed.

Have EACH FOT member: update Case Chronology to include, at a minimum, date ROI #4 entered; print or copy ROI #4; and place ROI #4 in the 2nd section of the file folder.

- i. CM #83
 1. Enter INTERIM ROI (ROI #4) by using Case Number
 2. Enter information relating to your specific target to include related training dates
 3. Link subject record for (b)(6), (b)(7)(C)
- ii. (b)(6), (b)(7)(C) ROI #4 SYNOPSIS and NARRATIVE
 1. Thumb drives contain “goby” synopsis and narrative for ROI #4
 2. Use officer notes, booking forms, 6051s, sketch, photo log, and room identification forms to complete the ROI
- iii. Supervisory Approval (SA10)
 1. ROI to be reviewed and approved by CCS-C
 2. Report back to assigned FOT any errors found
- iv. Prosecution Case File Folder
 1. Case Chronology and Review Form
 2. Print (print screen) the entire ROI
 3. Place a copy of ROI #4 to include subject record in their respective Prosecution File Folder

Q. Phase 17: (Day 13: 0730 - 1130)

Prepare a Significant Incident Report.

Instructor Notes: FOTs are in BREAKOUT ROOMS – [REDACTED]

Phases 15-16, 18-20 are being conducted simultaneously with Phase 17 during a 4 hour block.

Use Instructor (b)(6) SIR, SIR Checklist and P.E. SKILLS Assessment Checklist to grade the FOT. Provide FOT feedback, and conduct remediation if necessary.

Have EACH FOT member: update Case Chronology to include, at a minimum, date SIR completed; and, print or copy and place SIR in 4th section of the file folder.

- i. Write SIR using WORD template on Thumb Drive
 1. Thumb drive contains WORD template for SIR (Op Predator)
 2. Use information from phases 13 – 16 and modify (b)(6), (b)(7)(C) narrative to draft SIR narrative
 3. Purpose is to report the follow-up to the (b)(6), (b)(7)(C) i.e., the actual

- execution of the AW and SW on (b)(6),(b)(7)(C) and at his residence
- ii. CCS-C Approval
 1. This is the SEN P.E. (use P.E. Skills Assessment Checklist)
 2. SIR to be reviewed and approved by CCS-C
 3. Report back any errors found, and remediate if necessary
- iii. Prosecution Case File Folder
 1. Case Chronology and Review Form
 2. Place a copy of the SIR in their respective Prosecution File Folder

R. Phase 18: (Day 13: 0730 – 1130)
Testify at the preliminary and detention hearing.

Instructor Notes: FOTs are in BREAKOUT ROOMS

Phases 15-17, 19 - 20 are also being conducted simultaneously. Testifying FOT takes about 1 hour, so the other FOTs should work on remaining 4 phases. Advise students that example testimony notes are located at O:\ERO Lesson Plans\FOTP-P\ - Student Thumb Drive\Day 13.

CCS-C and remaining FOT members will accompany testifying officer to the hearing to "observe".

Use Phase 18 PH/DH Instructor CHECKLIST as a guide and provide FOT feedback. Assess on whether he/she establishes (b)(6),(b)(7) violated the elements of 8 USC 1326(a) and (b)(2) and that (b)(6),(b)(7) is a flight risk.

- i. FOT, Legal Instructor and CCS-C Meeting
 1. Review A-file and Prosecution File Folder
 2. Prepare for testimony
- ii. Testimony
 1. LEGAL Instructor will role-play as the "AUSA"
 2. USMJ, (b)(6),(b)(7) Defense Attorney, Deputy Clerk, and U.S. Marshal will be role-players
 3. One FOT member will testify while the remaining members and CCS-C observe
 4. LEGAL Instructor / CCS-C will then critique the student's testimony

S. Phase 19: (Day 13: 0730 – 1130)
Complete the I-44 in EABM to include entries in the property tab, and print the I-44.

Instructor Notes: FOTs will proceed to BREAKOUT ROOMS. (b)(7)(E) training logins for each FOT are as follows (b)(7)(E)

Prior to start of class, CCS-Cs are required to enter an event on (b)(6),(b)(7) using the first 2 screens found on their respective (b)(6),(b)(7) located at O:\ERO Lesson Plans\FOTP-P\CCS Instructor GOBY materials\CCS Phase 19].

Phases 15, 18 and 20 are also being conducted simultaneously.

REMINDER: FOT member assigned to phase will move to the instructor station.

A pre-written narrative is located on the thumb drive. All students will make minor adjustments to fit their specific target, e.g., full name, A#, and training day dates; however, only the assigned FOT member will upload to I-44.

Have student logon to ENFORCE training database and query team event. Use the (b)(6),(b)(7)(E) SCREEN SHOTS located at O:\ERO Lesson Plans\FOTP-P\CCS Instructor GOBY materials\CCS Phase 19 to guide your FOT through the PROPERTY TAB entries and I-44 page. Upon completion, print the I-44 and review against (b)(6).

Provide FOT feedback and provide additional practice if needed.

Each FOT member will need a copy of the I-44 to place in 4th section of the file folder.

- i. (b)(6),(b)(7) I-44 NARRATIVE
 1. Thumb drives contain "goby" narrative
 2. Each FOT will modify "goby" with reference to name, A# and dates
- ii. Query event in EABM
 1. Select EDIT SUBJECT
 2. Select PROPERTY TAB
 - a. Select DOCUMENT and enter each seized item
 - b. Associate each seized item with (b)(6),(b)(7)
 - c. Complete "Confiscated By" tab
 - d. Complete "Inventoried By" tab
 - e. Complete "Identifying Nbrs." tab
 3. SAVE and GREEN ARROW back to Record Subject Screen
- iii. Select I-44 Page from (b)(7)(E) drop-down
 1. Sector # = 6051S #(s)
 2. Name = Type "HELD" rather than use drop-down
 3. Address = Local ERO office address
 4. Apprehended/Interviewed = BOTH
 5. Arrest = Manually enter the information (*NOTE: there is no interoperability between the I-44 arrest tab and the EABM arrest tab*)
 6. Select Prop/Subj = select each item as well as (b)(6),(b)(7)
 7. Narrative = copy and paste from thumb drive
- iv. CCS-C Approval
 1. Review and approve
 2. Report back to assigned FOT any errors found
- v. Prosecution Case File Folder
 1. Print I-44
 2. Place a copy of I-44 in their respective Prosecution File Folder

T. Phase 20: (Day 13: 0730 - 1130)

Prepare ICE letter requesting certificate of non-existence; and,
Complete the FDL analysis request; submit evidence for analysis; and, receive report.

Instructor Notes: FOTs are in BREAKOUT ROOMS

Phases 15 - 19 are also being conducted simultaneously during this time frame.

The ICE letter, found on student TD, should be completed and reviewed by CCS-C. Use the INSTRUCTOR (b)(6) as guide and review letter for accuracy and completeness. Provide feedback and additional practice if needed. The resulting CERTIFICATE OF NONEXISTENCE is located in the PW.

NOTE: remind FOTs they may be required to have the fingerprints from the state conviction compared to the defendant to "prove" the defendant was in fact convicted of the aggravated felony. This typically is required if the case is going to trial, but may vary depending on district and/or defense attorney.

ICE 73-003, found on student TD, should be completed. FOTs will complete the 73-003 and obtain documents from their prosecution file folder. The entire package will then be handed to the CCS-C for review. NOTE: A companion 6051S should accompany all documents in order to provide for a chain of custody.

Use INSTRUCTOR GOBY as a guide and review for accuracy and completeness. Ensure that the package contains all listed documents. Provide FOT feedback and additional practice if needed.

ONCE COMPLETE: Return FDL package to the FOT and advise that the resulting FDL report is located in their PW. FOTs will need to make copies of the ICE 73-003 for their prosecution file folder.

Have EACH FOT member: update Case Chronology to include, at a minimum, date CIS letter sent and Certificate of Non-existence received, and date FDL request sent and report received back. Copy of ICE letter to CIS goes in the 4th section of the file folder; and, the copy of Certificate of Non-existence may go in either the 4th or 5th section of the file folder. Place appropriate copies and resulting FDL report in 4th section of the file folder.

- i. ICE Letter request
 1. Thumb drive contains draft letter for request
 2. Enter information relating to your specific target to include related training dates
- ii. CCS-C
 1. CCS-C receives letter request
 2. CCS-C returns letter to FOT along with the Certificate of Nonexistence (PW)
- iii. Prosecution Case File Folder
 1. Case Chronology and Review Form
 2. Place copy of letter along with certificate in their respective Prosecution File Folder
- iv. ICE Form 73-003 (FDL Request for Laboratory Examination)
 1. Thumb drive contains (b)(6),(b)(7)(C) ICE 73-003
 2. Enter information relating to your specific target to include related training dates
 3. Attach documents from Prosecution folder
 - a. Executed I-205
 - b. FD-249 from 5/3/2007
 - c. FD-249 from Day 0
 - d. FD-249 from Day 12
 - e. I-294
 4. Complete a 6051S listing the above items
 5. Submit the FDL request along with evidence to CCS-C
- v. CCS-C will act as FDL
 1. Review report for accuracy and completeness
 2. Return to FOT along with the FDL Report (PW)
- vi. Prosecution Case File Folder
 1. Case Chronology and Review Form
 2. Place the FDL package and FDL Report in their respective Prosecution File Folder

U. Phase 21: (Day 13: 1330 - 1630)

Create an interim ROI in (b)(7)(C) CM and upload the case synopsis and narrative.

Instructor Notes: For phases 21 - 24, FOTs will proceed to their respective BREAKOUT ROOMS.

Phases 22-24 are being conducted simultaneously. Any incomplete phases from the 0730-1130 block should be finished during this block.

FOT should modify ROI #5 on their thumb drive, upload synopsis and narrative in (b)(7)(C) CM, and link the (b)(6),(b)(7)(C) subject record.

Once completed, conduct the Supervisory Approval (SA10), verify for accuracy and completeness, and approve. Provide FOT feedback and additional practice if needed.

Have EACH FOT member: update Case Chronology to include, at a minimum, date ROI #5 entered; print or copy

- i. CM #83
 1. Enter INTERIM ROI (ROI #5) by using Case Number
 2. Enter information relating to your specific target to include related training dates
 3. Link subject record for (b)(6),(b)(7)(C)
- ii. (b)(6),(b)(7)(C) ROI #5 SYNOPSIS and NARRATIVE
 1. Thumb drives contain "goby" synopsis and narrative for ROI #5
 2. Use FDL report and Certificate of Non-existence to complete the ROI
- iii. Supervisory Approval (SA10)

U.S. Immigration and Customs Enforcement
Lab Exercise Plan

Continuing Case Scenario GUIDE

Exercise Description

I. Title

FOTP-P Continuing Case Scenario (CCS) INSTRUCTOR GUIDE

II. Synopsis

This lesson plan is the instructor guide for the orientation, laboratory (LAB) and practical exercise (P.E.) portions of the FOTP-P course. It provides the assigned Continuous Case Scenario Coordinator(s) (CCS-C) information needed to present the orientation and lead the 26 phases that comprise the FOTP-P Continuing Case Scenario (CCS). LAB ASSESSMENT CHECKLISTS, GOBYs, and P.E. SKILLS ASSESSMENT CHECKLIST have also been developed to assist the CCS-C in providing feedback and, if necessary, remediate their assigned Field Operation Team (FOT) members. Students will be instructed on the following relevant lessons: ERO Prosecutions; (b)(7)(C) Case Management (b)(7)(C) CM); Prosecution Case File Folder; ERO Report Writing; Perimeter; Approach and Stacking; Breaching and Ballistic Shield; Warrant Service Entry Tactics; Execution of Criminal Warrants; Significant Event Notification (SEN); ICE Enforcement Operations Plan (ICEEOPLAN); and Evidence. The CCS is a simulated field situation which integrates all of these FOTP-P lessons. To review what was learned in DFOTP and already being done in the field, students will be expected to take a lead and develop the information, specifically by completing an I-138, ICE administrative subpoena. Having presented and had the criminal case accepted for prosecution, the students will then be expected to correctly formulate the next steps in the criminal prosecution process, to include applying for, obtaining and executing a criminal search and arrest warrant. The course will conclude with the criminal conviction and proper disposition of evidence. The investigative steps of this criminal prosecution will be recorded in (b)(7)(C) CM and a Prosecution Case File Folder will be prepared.

III. Agenda

This is how the course will proceed:

- FOTP-P Continuing Case Scenario (CCS) orientation using power point, and begin with ICE academy administrative issues.
- CCS coordinator (CCS-C) introduction and explanation that each will be acting as an FOT Supervisory Deportation Officer.
- LEGAL instructor introduction and explanation he/she is the Assistant U.S. Attorney (AUSA) for the CCS, and the ERO Prosecution lesson instructor. The lesson is broken into seven blocks, followed by a CCS phase to practice what was taught.

1. ROI to be reviewed and approved by CCS-C
2. Report back to assigned FOT any errors found
- iv. Prosecution Case File Folder
 1. Case Chronology and Review Form
 2. Print (print screen) the entire ROI
 3. Place a copy of ROI #5 in their respective Prosecution File Folder

V. Phase 22: (Day 13: 1330 - 1630)
Testify before the Grand Jury for indictment.

Instructor Notes: FOTs will meet briefly with legal instructor in a breakout room before GJ.

Phases 21, 23 - 24 are being conducted simultaneously during this time frame.

The INDICTMENT is in their course material and was discussed during ERO Prosecutions demo on Day 12. CCS-C and FOT will accompany testifying officer to the hearing to "observe". Advise students that example testimony notes are located at O:\ERO Lesson Plans\FOTP-P/e - Student Thumb Drive\Day 13.

Use P.E. SKILLS ASSESSMENT CHECKLIST as a guide. CCS-C will complete the assessment, while the Legal Instructor acts as the AUSA. CCS-C and Legal Instructor will provide FOT feedback regarding testimony.

Have EACH FOT member: update Case Chronology to include, at a minimum, date of indictment; place indictment in the 3rd section of the file folder.

- i. FOT, Legal Instructor and CCS-C Meeting
 1. Review A-file and Prosecution File Folder
 2. Prepare for testimony
- ii. Testimony
 1. LEGAL Instructor will role-play as the "AUSA"
 2. Grand Jurors and Court Reporter will be role-players
 3. One FOT member testifies while the remaining members and CCS-C observe
 4. Officer must establish PC for 8 USC 1326(a) and (b)(2), 2 counts of 18 USC 911, 18 USC 1028(a)(1) and 18 USC 1028A(1)
 5. LEGAL Instructor / CCS-C will then assess and critique the student's testimony

W. Phase 23: (Day 13: 1330 - 1630)
Enter case statistics, create an interim ROI in TECS Case Management, and upload the case synopsis and narrative.

Instructor Notes: FOTs will be in their breakout rooms (simultaneous to Phases 21-22, 24).

If FOT has not completed Phase 22 yet, remind them that the INDICTMENT is in their course material, and was discussed during the ERO Prosecutions demo on Day 12.

FOT should modify ROI #6, based on indictment, upload synopsis and narrative into (b)(7) CM, and link the (b)(6),(b)(7) subject record.

Using the indictment, FOTs should enter 4 IN statistics into CM 81 as follows: 8USC1326 – 1 count; 18USC911 – 2 counts; 18USC1028(a)(1) – 1 count; and, 18USC1028A – 1 count. Day 13 will be the IN date.

Once completed, conduct the SA10 and SA22, verify for accuracy and completeness, and approve. Provide FOT feedback and additional practice if needed.

Have EACH FOT member: update Case Chronology to include, at a minimum, date ROI #6 entered; print or copy ROI #6; and, place ROI #6 in the 2nd section of the file folder.

- i. CM #83
 1. Enter INTERIM ROI (ROI #6) by using Case Number .
 2. Enter information relating to your specific target to include related training dates
 3. Link subject record for (b)(6),(b)(7)
- ii. (b)(6),(b)(7) ROI #6 SYNOPSIS and NARRATIVE
 1. Thumb drives contain “goby” synopsis and narrative for ROI #6
 2. Use indictment to complete the ROI
- iii. Supervisory Approval (SA10)
 1. ROI to be reviewed and approved by CCS-C
 2. Report back to assigned FOT any errors found
- iv. CM #81
 1. Enter IN statistics into (b)(7)(C) CM
 2. There are 5 counts on the indictment, but only 4 IN stats will be entered as one violation, 18 USC 911, has 2 counts
- v. Supervisory Approval (SA22)
 1. Statistics to be reviewed and approved by CCS-C
 2. Report back to assigned FOT any errors found
- vi. Prosecution Case File Folder
 1. Case Chronology and Review Form
 2. Print (print screen) the entire ROI
 3. Place a copy of ROI #6 in their respective Prosecution File Folder

X. Phase 24: (Day 13: 1330 – 1630)

Coordinate with the USAO to obtain concurrence with disposing evidence.

Instructor Notes: FOTs are in their breakout rooms (simultaneous to Phases 21-23).

Instruction on EPO #5 for Evidence (Disposal) was given at 1230 on TD 13 and final instruction on ERO Prosecutions (EPO #3 Motions, Suppression Hearings, Guilty Plea, Trial, and Sentencing) will be provided on TD 14, 0730 to 1130. FOTs have been provided with (b)(6),(b)(7)(C) plea agreement and J&C.

FIRST: Students should determine that none of the evidence should be maintained by ICE or destroyed; all evidence can be returned to (b)(6),(b)(7)(C) (ID), HMC (TX BC and SSN card) or the SC DMV (SC DL).

Three ICE Memos will be drafted: TX BC and SSN will be returned to HMC; SC DL will be returned to the SCDMV; and, Costa Rica ID will be returned to (b)(6),(b)(7)(C) A-file. The FOTs should draft these memos using TD 14 since this is the “conviction date”.

Each FOT will observe the TL/EV remove evidence from the locker. An entry should be made in the Logbook indicating the “purpose of entry” was for “removal of evidence for disposal”. The “comments/location” entries should be “returned to Hector Martinez Cruz”; “returned to SCDMV”; and “placed in A-file” (b)(6),(b)(7)(C)

In order to complete Section 16 (Acceptance / Chain of Custody) of the 6051, the CCS-C will act as HMC and the SCDMV for purposes of a signature.

Have EACH FOT member: update Case Chronology to include, at a minimum, date evidence returned; print or copy each of the three memos along with the updated 6051S; and, place Memos and original updated 6051S in the 4th section of the file folder. DON'T FORGET TO PUT THE EVIDENCE BACK IN THE CABINET!!!

- i. Review of evidence seized
 1. Texas Birth Certificate
 2. South Carolina DL
 3. Social Security card
 4. Costa Rica ID
- ii. How can the above evidence be categorized?
 1. Can ICE keep any of the above?
 - a. Administrative or Judicial Forfeiture
 - b. Abandoned property

2. Do we have to return to owner?
 - a. Personal effects
 - b. Valid / lawful right to possess
3. Do we have to return to the issuing agency?
4. Should anything be destroyed?
 - a. Fraudulent documents
 - b. Remove from circulation
- iii. Obtain appropriate permission / concurrence prior to taking action
 1. AUSA
 2. Supervisor (CCS-C)
- iv. ICE Memo to File
 1. Thumb drives contain "goby" ICE Memo to File for Evidence Disposition
 2. Memo(s) should reflect the disposition of each piece of evidence
- v. TL/EV will:
 1. Make appropriate notations in evidence logbook
 2. Enter the evidence room
 3. Remove evidence from locker
 4. Complete section 16 (Acceptance/Chain of Custody) of the original 6051(s).
- vi. Prosecution Case File Folder
 1. Case Chronology and Review Form
 2. Print all ICE Memo(s)
 3. Place a copy of each ICE Memo in the Prosecution File Folder
 4. Place the original 6051(s) in the Prosecution File Folder

Y. Phase 25: (Day 14: 1230 - 1330)

Enter Case Statistics and Case Hours, write an investigative report, create a closing ROI in (b)(7)(C) Case Management, and upload the case synopsis and narrative.

Instructor Notes: FOTs will go to their respective breakout rooms.

STATS and HOURS:

Use the Plea agreement and J&C to enter CO and DI statistics in CM 81. A "CO" stat should be entered for both the 1326 and 911 violation. 3 DI stats should be entered for the 1028(a)(1), 1028A and second 911 violation. TD 14 will be the date of the statistics. Students should also enter 40 hours against their case.

When complete, conduct the Supervisory Approval of the STATS and HOURS first (SA21 and SA22). Use INSTRUCTOR (b)(6) to review and provide feedback and additional practice if needed.

(b)(7)

REPORT WRITING and ROI #7:

Using the Plea Agreement and J&C, the FOTs will draft ROI #7 in WORD and save on Thumb Drive. Once reviewed and assessed, FOT will then enter ROI #7 in TECS CM, upload synopsis and narrative from their thumb drive onto ROI #7, and finally link the (b)(6),(b)(7) subject record.

Conduct the Supervisory Approval of the closing ROI (SA10). Use INSTRUCTOR (b)(6) and the P.E. SKILLS ASSESSMENT CHECKLIST to review and grade the WORD document and upload of ROI #7. Provide FOT feedback regarding any mistakes and remediate if necessary.

Once all have been approved (stats, hours and ROI), the case should be closed. Have FOTs conduct a GQ05 on their case to verify that it is closed, and that all ROI's (7) and an "AR" incident report have been entered.

See Phase 26 for the Prosecution File folder PE which will require FOT members to properly update Case Chronology and properly file the closed case (CM 79) and closing ROI (CM 83) in the file folder.

- i. CM #81
 1. Enter CO and DI statistics into (b)(7)(E) CM
 2. Use plea agreement and J&C as guides for which violations are closed due to a conviction and which are closed due to dismissal
 3. Post hours against your open case based on the current month
- ii. Supervisory Approval (SA22)
 1. Statistics and hours to be reviewed and approved by (b)(7)(E) Instructor
 2. Report back to assigned FOT any errors found
- iii. Supervisory Approval (SA21)
 1. Hours to be reviewed and approved by (b)(7)(E) Instructor
 2. Report back to assigned FOT any errors found
- iv. Write ROI #7 in WORD and save on Thumb Drive
 1. Use plea agreement and J&C to write the ROI
 2. Once saved, upload ROI onto ROI #7
- v. CM #83
 1. Enter CLOSING ROI (ROI #7) by using Case Number
 2. Enter information relating to your specific target to include related training dates
 3. Link subject record for (b)(6), (b)(7)(E)
- vi. Supervisory Approval (SA10)
 1. ROI to be reviewed and approved by (b)(7)(E) Instructor
 2. Report back to assigned FOT any errors found
- vii. GQ #05
 1. Enter FOT (b)(7) Case #
 - a. Observe that the case is "Closed"
 - b. Print "CLOSED" case
 2. Review all linked documents (Shift F2)
 - a. 2 subject records (optional 3rd for vehicle)
 - b. Incident report
 - c. 7 ROI's

Z. Phase 26: (Day 14: 1330 - 1430)

Prepare and maintain a Prosecution Case File Folder.

Instructor Notes: FOTs will proceed to BREAKOUT ROOMS – (b)(6)

As the FOTP-P CCS (Labs and P.E.s) has progressed, FOTs have been provided with and/or have created a variety of documents. Phases ended with instruction for placing these documents in the appropriate sections of the file folder.

Phase 26 not only represents the Prosecution File Folder P.E. but will also provide each FOT with an opportunity to review and verify that each FOT member's file is complete and accurate, and can be used as a field (b)(6). Prior to Phase 25, CCS-Cs should have reviewed each FOT members pros folders to ensure phases 1-24 documents have been properly placed and that the Case Chronology sheet has been properly updated. Refer to the INSTRUCTOR (b)(6) Folder.

Once that is complete, begin the P.E. Although each FOT member should complete their respective file, only ONE file will be chosen to represent the TEAM for P.E. purposes. Each FOT member will: make final update to Case Chron to include, at a minimum, date of guilty plea and sentencing, date ROI #7 entered, and notate "Case Closed"; print ROI #7 and place in the 2nd section of the file folder; print GQ05 "Case Closed" and place in the 1st section of the file folder; and, file Plea Agreement and J&C in 3rd section.

Use INSTRUCTOR (b)(6) Prosecution File Folder as a guide, and the P.E. SKILLS ASSESSMENT CHECKLIST. Review students' folders for accuracy and completeness. Instructor will provide FOT feedback, and remediate if needed.

- i. Phases 1-24
 1. Case Chronology and Review Form has been updated as phases have been completed
 2. ROI's #1-6 have been filed in Section #2
 3. Warrants, Affidavit and Indictment have been filed in Section #3
 4. All ICE/DHS documents to include requests, reports, memos and 6051s have been filed in Section #4
 5. All documents from outside agencies have been filed in Section #5
 6. MISC documents, to include law enforcement notes, photographs and fingerprints, have been filed in Section #6
- ii. Phase 25 documents and entries will be the P.E.
 1. Make final update to Case Chronology and Review Form
 2. Place "Closed" case in their respective Prosecution File Folder
 3. Place copy of ROI #7 to include subject record in their respective Prosecution File Folder
 4. Place a copy of the plea agreement and J&C in their respective Prosecution File Folder

III. Demonstration

This FOTP-P CCS Guide is the instructors guide for the Student Practice and Test of Final Activity portion of all lessons presented over the course of FOTP-P. Demonstration for each CCS critical element was provided for during or after the instruction of each respective lesson plan: ERO Prosecutions, (b)(7)(C) CM, Prosecution File Folder, Report Writing, Execution of Criminal Warrants, Evidence, SEN, and ICE Enforcement Operations Plan.

Instructor Notes: Instructors have already demonstrated the expected activity to be performed during the lecture portion of the related lesson. See the associated LP for further information.

IV. Student Practice

The FOTP-P CCS contains phases which allow students to practice what was taught during the instruction of each respective lesson plan:

Phase 1: DFOTP Review / ERO Prosecutions Lab

Phase 2: DFOTP Review / ERO Prosecutions Lab

Phase 3: ERO Prosecutions Lab

Phase 4: (b)(7)(C) CM Lab

Phase 5: (b)(7)(E) CM Lab

Phase 6: (b)(7)(E) CM Lab

Phase 7: (b)(7)(E) CM Lab

Phase 8: ERO Prosecutions Lab / Report Writing Lab

Phase 9: ICEEOPLAN Lab / Execution of Criminal Warrant Lab

Phase 10: ERO Prosecutions Lab

Phase 11: SEN Lab

Phase 12: Execution of Criminal Warrants Lab / ICEEOPLAN Lab/Approach and Stacking

Phase 13: Execution of Criminal Warrants Lab/Perimeter/Approach and Stacking/Breaching and Ballistic Shield/Warrant Service Entry Tactics

Phase 14: Evidence Lab

Phase 15: (b)(7) CM Lab

Phase 16: (E) CM Lab

Phase 18: ERO Prosecutions Lab

Phase 19: Evidence Lab

Phase 20: ERO Prosecutions Lab / Evidence Lab

Phase 21: (b)(7) CM Lab

Phase 23: (E) CM Lab

Phase 24: Evidence Lab

Refer to Phase description and attached Lab Assessment Instructor Guide or Instructor GOBY for further instruction.

V. Feedback / Remediation

Every phase that constitutes student practice allows for instructor assessment and feedback. During the critique, if instructor determines further practice is needed, remediation will be conducted immediately.

VI. Assessment

The FOTP-P CCS contains phases which test what students were taught during the instruction of each respective lesson plan, and have already practiced:

Phase 17: SEN P.E.

Phase 22: ERO Prosecution P.E.

Phase 25: Report Writing and (b)(7) CM P.E.

Phase 26: Prosecution Case File Folder P.E.

Refer to Phase description and attached P.E. Skills Assessment checklist for further instruction.

Day 14 / 15 Final P.E.

The following describes the final P.E. which tests what students were taught during the Perimeter, Approach and Stacking, Breaching and Ballistic Shield, Warrant Service Entry Tactics, ICEEOPPLAN LP, Execution of Criminal Warrants LP and Evidence LP. Students have already practiced the EPOs from these lessons during previous CCS Phases.

Instructor Notes: The final P.E. will begin on the afternoon of Day 14 and finishes NLT 1130 am on Day 15. This P.E. covers all Tactics related LPs and the final three CCS LPs: ICEEOPPLAN, Execution of Criminal Warrants and EVIDENCE. Use the appropriate checklists located at O:\ERO Lesson Plans\FOTP-P\CCS Instructor (b)(6) materials\P.E. Documents\FINAL P.E. DAY 14 and 15\INSTRUCTOR (b)(6) for feedback and critique. Use the Final P.E. assessment checklist located at O:\ERO Lesson Plans\FOTP-P\P.E. Assessment Checklist to score graded items. Upon completion of each portion of the P.E., immediately provide feedback and remediate if necessary.

Final P.E. debrief and ERO Prosecution summary will be conducted by LEGAL at 1230 on Day 15.

Each FOT is being given the SAME target, and all documents refer to the residence as 555 Smith Lane, Rochester, NY. The FOTs are being informed that they are being detailed to the FOD BUF for SW Execution. Each FOT will actually execute the SW at their previously assigned RH.

TD 14: ICEEOPLAN P.E. (1430 – 1630)

Instructor Notes: FOTs will proceed to BREAKOUT rooms. Refer to Phase 9 instructions for further explanation, and use the P.E. Instructor (b)(6) ICEEOPLAN for feedback. Use Final P.E. assessment checklist to score graded items, which include: violation/charges; name, DOB, address; and, personnel assignments. Total points possible for this section are 12.

Direct FOT member to their ICEEOPLAN located on thumb drive at O:\ERO Lesson Plans\FOTP-P\Student Thumb Drive\Day 14\ICEEOPLAN P.E. Day 14. The TL and the EV have already been assigned. Recommend FOTs rotate other assignments.

Provide your FOT with the following INTEL:

Federal Probation reports having been on site visits and has provided a verbal description of the house. In addition, there have been various family members occasionally staying at the house, and it is unknown at this time who/how many are there.

RPD has also been contacted and will assist with perimeter. Having conducted a check with the NY firearms database, no pistol permits have been obtained by the target nor are any firearms registered to the target address. RPD agrees to take possession of any firearms seized by ERO should federal prosecution be declined. In addition, RPD recommends entry to be made at back door.

TARGET: (b)(6),(b)(7)(C) Jamaica (b)(6),(b)(7)(C) LPR

- Provide FOT with the signed SW and related documents for DAVIS residence
- Provide FOT with the DAVIS FOW to include aerial photo, maps and Use of Force continuum
- Provide FOT with the notes from the Rochester Police Department (RPD)
- Explain that DO (b)(6),(b)(7)(C) (ERO/Buf) obtained the SW along with an AW for (b)(6),(b)(7)(C) DC (b)(6),(b)(7)(C) will be at the local probation office to execute the AW while the FOT (A, B, C) is at the residence executing the SW
- FOT should review all of the above and use information to complete ICEEOPLAN
 - Located on student thumb drive at O:\ERO Lesson Plans\FOTP-P\Student Thumb Drive\Day 14\ICEEOPLAN P.E. Day 14
 - FOW will aid in completing missing sections of ICEEOPLAN
 - One per team, to be reviewed and graded by CCS-C
- Pre-operation BRIEF
 - Cover all sections of the ICEEOPLAN
 - Discuss appropriate notifications and de-confliction

Instructor Notes: TI is to be present for this brief

Refer to Phase 12 instructions for further explanation, and use the ICEEOPLAN Briefing P.E. checklist for feedback. This is located at O:\ERO Lesson Plans\FOTP-P\CCS Instructor (b)(6) materials\P.E. Documents\FINAL P.E. DAY 14 and 15\INSTRUCTOR (b)(6). Use P.E. assessment checklist to score graded items located in the ICEEOPLAN section.

The briefing can be conducted by the FOT member assigned as TL or the member assigned to draft the ICEEOPLAN.

For this operation, RPD was notified Day 14 and has agreed to participate as perimeter. Typically, all LEOs participating in an operation must attend the pre-op briefing; however, no role players will be used today.

TD 15: Execution of Criminal Warrant P.E. (0730 – 1000)

Instructor Notes: RH SETUP Day 15 0730

Assigned CCS-C will be required to bring their assigned RED GUN as well as the remaining evidence (maintained in the DFOTPP cabinet located in MCR) to setup RH the morning of the P.E. Evidence should be hidden as follows:

- BC/SSN (b)(6),(b)(7)(C) Under master bathroom sink
- I-551 (b)(6),(b)(7)(C) RED GUN and magazine with 2 dummy rounds – bedroom dresser/bureau [together so there is a connection]
- NY DL (b)(6),(b)(7)(C) Living room table.

Instructor Notes: FOTs will proceed to BREAKOUT rooms with assigned TIs. REMINDER: ADVISE FOT's that RPD HAS SET-UP PEREMETER AND RECOMMENDS ENTRY VIA BACK ENTRANCE.

TI will communicate to CCS-C when FOT is en-route, as the CCS-C will be temporarily role-playing at their respective RH. SEE BELOW INSTRUCTOR NOTE FOR FURTHER INFO.

- FOT Staging (Day 15: 0730 – 0800)
 - Equipment check
 - Radios
 - Evidence Kit

Instructor Notes: Each FOTs CCS-C will play the role of (b)(6),(b)(7)(C) sister/brother-in-law. Set-up in kitchen / laundry area so that you can observe the back entrance. Upon knock, announce and demand entry, call out to FOT to "Come on in!". FOTs should identify and establish your connection to the residence. There is no set script; rather the following specific information to be provided if asked by FOT:

- You are a USC married to (b)(6),(b)(7)(C) brother/sister (use your real name and ID)
- You and your spouse (make up name) had a fight, and (b)(6),(b)(7)(C) is letting you stay at her house.
- You sleep in the back bedroom furthest away from kitchen
- You know (b)(6),(b)(7)(C) because he is married to (b)(6),(b)(7)(C)
- You do not recognize the name (b)(6),(b)(7)(C) nor are you aware if (b)(6) uses that or any other identity.
- You do not wish to answer any more questions – "Am I under arrest?"
- You need to leave to go to work – demand to be allowed to leave

TI will need to act as SECTOR so that FOT can conduct records check on in-law (CCS-C). Check will return "negative" for NCIC wants/warrants, and in-law (CCS-C) should be allowed to leave residence. When applicable, go "out of role". Observe and assess remainder of P.E.

Refer to Phase 13 instructions for further explanation on running the P.E. Use the Phase 13-14 and P.E. CHECKLIST for feedback. This is located at O:\FERO Lesson Plans\FOTP-P\CCS Instructor (b)(6) materials\P.E. Documents\FINAL P.E. DAY 14 and 15\INSTRUCTOR (b)(6) Use P.E. assessment checklist to score graded items, which include Approach/Stacking, Ballistic Shield, Breaching, Entry Tactics, and Execution of Warrants (critical).

All assessments, critiques, comments, to include tactics, will be made at the end of the EVIDENCE P.E.

- SW execution (0800 – 0900)
 - Make entry
 - Control and decide what to do with occupants
 - Pre-search walk-through
 - Detailed search
 - Post-search walk-through
 - Secure premises

- Evidence P.E. /Post-operation (0900 – 1130)

Instructor Notes: Refer to Phase 14 instructions for further explanation, and use Phase 13-14 and P.E. CHECKLIST for feedback. This is located at O:\ERO Lesson Plans\FOTP-P\CCS Instructor (b)(6) materials\P.E. Documents\FINAL P.E. DAY 14 and 15\INSTRUCTOR (b)(6). Use Final P.E. assessment checklist to score graded items located in the EVIDENCE section (critical).

Upon discover/seizure of the firearm: As taught in DFOTP, FOTs are expected to follow the 3/09 tasking

1. **AFTER** the EV / Photo are called, and the EV seized the firearm, make safe and contact sector
2. Call HSI duty agent for seizure, storage and/or forfeiture
3. HSI declines so seek assistance from RPD
4. REMEMBER should RPD also decline – ERO would need to seek judicial forfeiture and the SFI would take certain actions as well

INSTRUCTOR acting as SECTOR:

1. Should FOT call-in serial number - NEGATIVE for wants/warrants
2. Should FOT call for HSI duty agent – DECLINE as it is an ERO SW
3. Should FOT call for ATF duty agent – DECLINE as there are currently on another operation
4. Should FOT contact AUSA – DECLINE due to the fact that, although the weapon was located in (b)(6), bedroom, he is not present and it will be a difficult case to prove
5. Remind that RPD (Perimeter) has agreed to take TRANSFER of any firearm seized by ERO should federal prosecution be declined

De-brief at RH: Once TL has called the scene secure, instructors will conduct a de-brief before heading back to the classroom. The TIs' primary focus of assessment is tactics, while CCS-Cs' primary focus are rules and procedures; however, all instructors can contribute to the overall debrief.

Post-operation briefing at breakout room: TL will collect equipment, officer notes, sketches, logs, and forms. EV will finalize the packaging of evidence, e.g., verify what is listed on and in each bag matches each 6051S, seal each bag, and attach original 6051S to appropriate bag.

Once completed, CCS-C and TIs will score the Final P.E. assessment checklist as described above. Instructors will provide FOT feedback, and remediate if needed.

- Complete following documents:
 - 6051S (**minimum of 2** as firearm, magazine and ammo should be listed on a separate 6051S from the documents)
 - Evidence bags (**minimum of 3** as documents must be separate from firearm which must be separate from magazine and ammo)
 - Photo log
 - Room identification forms
 - Sketch
- Evidence bags must mirror 6051S's
- Final P.E Assessment REMEDIATION
 - Failure can occur 2 ways
 - Total score less than 31 points
 - Missing one or both "critical" points
 - Remediation scenario will be the same as above
 - FOTs will already have the necessary documents, to include the ICEEOPLAN.
 - FOTs will start from the "FOT Staging" point as described for

TD 15.

- Remediation will conclude when FOTs complete SW and evidence forms and announce that the premises is secure and clear.

Instructor Notes: REMEDIATION RH SETUP

While TIs and FOTs move back outside to reset “staging” in order to begin remediation, CCS-C will be required to re-hide as follows:

- BC/SSN (b)(6),(b) . Under master bed mattress.
- I-551 (b)(6), RED GUN and magazine with 2 dummy rounds – 2nd or back bedroom dresser/bureau.
- NY, DL, (b)(6),(b) . Kitchen table.

- Review course schedule to include all lessons and phases that follow to allow for practice.
- FOT A, FOT B, and FOT C meet separately with their assigned CCS-C, who will attempt to make assignments of phases (practice and P.E.).
- During the final week of the course, some of the CCS phases will be considered the P.E. for the related lesson plan. (SEN, Report Writing (b)(7)(E) CM, and ERO Prosecutions)
- On Day 14 and 15, there will be a separate P.E. for Perimeter, Approach and Stacking, Breaching and Ballistic Shield, Warrant Service Entry Tactics, Execution of Criminal Warrants, Evidence and ICEEOPLAN. The explanations of these P.E.'s are found at the end of this Guide.
- 34 hours total: 24 hours Lab and 10 hours P.E.

IV. Criterion for Successful Performance

Student performance will be observed and tracked on the ICE D Field Operations Training Program – Prosecutions CCS Team Assessment and Final P.E. Team Assessment Checklists. The items on both of these checklists denote the specific area of assessment for that particular criterion. Other actions taken by the teams that may be noteworthy may also be annotated on the checklist; however, only the specific area of assessment will be used to formulate the score of each team. Each specific area being assessed is noted on the Master copy of the ICE D Field Operations Training Program CCS Team Assessment Checklist and Final P.E. Team Assessment Checklist, along with its point value.

Training Day 14 and 15

Teams who fail the CCS-related practical exercises, which occur during Phases 17, 22, 25-26, and on Training Days 14-15 (final P.E.), will be offered the opportunity to receive remedial training and retake the practical exercises. Teams must complete the remediation and retesting within three days or waive the opportunity in writing. Teams who fail the retest will not receive a certificate of completion or graduation.

The following will be evaluated or tested:

- A. CCS TEAM Assessments: The team assessment includes reporting a Significant Incident, testifying before the grand jury, writing an ROI, uploading the closing ROI in (b)(7)(E) CM, and completing a prosecution case file folder. Students of teams that fail to achieve an overall 70% will be given the opportunity to remediate. Teams that pass the remedial will receive a 70% overall. Students from teams that fail the remedial will not receive a certificate of graduation. These students will receive a certificate of attendance.

**U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT
OFFICE OF TRAINING AND DEVELOPMENT**

**ICE Academy
Enforcement and Removal Operations**



**ERO PROSECUTIONS
Lesson Plan**

**FIELD OPERATIONS TRAINING PROGRAM –
PROSECUTIONS**

CONTROL PAGE

Developed By:

April 2011

(b)(6),(b)(7)(C)

CDI / DO, ICE Academy – Advanced
CDI / DO, ICE Academy - Advanced

Signature

Content Approved By:

Month / Year

(b)(6),(b)(7)(C)

Branch Chief, Advanced Training Section, ERO Academy

Signature

Signature

Instructional Design Reviewed By:

Month / Year

Name, Title

Signature

Signature

Instructional Design Reviewed By:

Month / Year

(b)(6),(b)(7)(C)

Unit Chief, OTD/ IMU

Signature

Signature

This document is not to be released outside the Office of Training and Development or the ICE Academy without the written permission of ICE Office of Training and Development Director or his designee.

Record of Changes

Date of Change	A=Add. M=Mod. D=Del.	Description of Change	Reason for Change	Approved By (FN, LN, Operational Unit Chief or IMU Representative)
11/9/11	m	10 days to 14 days	Rule 41 update	
4/18/12	M	Change dates/times for Block 6, SME and Block 7. Fix total lesson hours	Change in schedule needs to be reflected on LP	
5/23/2012	A and M	Change time limits for preliminary hearing / add instructor note for obtaining A-File	FRCrimP update / recently obtained info re: A-File acquisition	
October 2012	M	Updates to case examples		

TABLE OF CONTENTS

LESSON DESCRIPTION	X
LESSON ADMINISTRATION	X
INTRODUCTION	X
I. Motivation	X
II. Objectives.....	X
III. Advance Organizer of Main Ideas.....	X
IV. Review of Prerequisites	X
V. Agenda	X
INSTRUCTION	X
I. Explanation.....	X
A. EPO #1:	X
B. EPO #2:	X
II. Demonstration	X
III. Student Practice	X
IV. Feedback and Remediation	X
CONCLUSION.....	X
I. Summary of Main Ideas.....	X
II. Integration	X
III. Objective(s)	X
IV. Motivation	X
V. Test of Final Activity	X
INSTRUCTOR NOTES FOR LAB EXERCISES	X

LESSON DESCRIPTION

I. LESSON TITLE

ERO Prosecutions

II. PROGRAM/COURSE TITLE

Field Operations Training Program - Prosecution

III. DESCRIPTION

This course is designed to provide ERO officers with an overview of federal criminal court procedures and the elements of crimes commonly encountered by ICE officers. Through lecture, demonstration, and practice in a case scenario involving role-playing, students will learn how to professionally and timely present and prepare a criminal prosecution in accordance with accepted legal procedures for the purpose of bringing a criminal offender to justice.

NOTE: The student practice is described in the FOTP-P CCS Guide, specifically phases 3, 8, 10 and 18. The test of final activity is described in phase 22.

IV. TERMINAL PERFORMANCE OBJECTIVE

Condition: Given a field situation in which the elements of a federal crime exist,

Behavior: the ERO officer will recognize that a crime has been committed, determine if the case should be presented for federal prosecution, and follow the steps required for the successful completion of that prosecution,

Criterion: in accordance with federal statutes and the Federal Rules of Criminal Procedure (FRCrMP).

V. ENABLING PERFORMANCE OBJECTIVES

EPO #1 Recognize when an alien is in violation of federal criminal law.

EPO #2 Coordinate with the U.S. Attorney's Office and the U.S. District Court, as well as other agencies involved in the prosecution process.

EPO #3 Follow federal court procedures (based on the FRCrMP).

EPO#4 Prepare various documents used in federal court.

VI. LENGTH OF LESSON

PRESENTATION (Including Demonstration)	STUDENT PRACTICE	STUDENT EVALUATION	TOTAL
12 hrs	4 hrs	1 hr	17 hrs

LESSON ADMINISTRATION

I. LESSON TITLE

ERO Prosecutions

II. RISK MANAGEMENT PLAN (If Required)

None

III. FACILITY REQUIREMENTS

Main classroom (up to 24 students with instructor station with presentation equipment)

3 Break-out rooms (for up to 8 students and 1 instructor)

Mock office and courtroom areas and Role Players (see FOTP-P CCS)

IV. TRANSPORTATION REQUIREMENTS

NONE

V. REQUIRED STAFF

One legal instructor is required for lecture and demonstration portions of this course. During the CCS Phases and the P.E., all three Continuing Case Scenario Coordinators (CCS-C) are required in addition to the legal instructor.

Day 14 (0930-1130): One guest instructor is required for the last 2 hours of the 6th block of instruction. This instructor will be a subject matter expert in the areas of the federal guidelines, sentencing procedure, pre-sentence investigation and the preparation of reports.

Instructor Preparation: For lecture portion of this class, instructor must be a subject matter expert in the area of criminal prosecutions. For the LAB, CCS-C's must be familiar with the FOTP-P CCS Guide, specifically Phases 3, 8, 10, 18, and 22.

VI. ACADEMY PROVIDED TRAINING AIDS/EQUIPMENT

- Instructor Guide – ERO Prosecutions
- Instructor Guide – FOTP-P CCS Guide
- Power Point Presentation
- Individually issued secure thumb drive containing reference material
- Role Players
- Mock court room and offices

VII. STUDENT PROVIDED EQUIPMENT

- None

VIII. STUDENT SPECIAL REQUIREMENTS

- None

IX. STUDENT HANDOUTS/MATERIALS

To be provided in the participant workbook:

- FLECT Legal Division Student Handbook
- Immigration Legal Handbook
- For Day 12, Block 5 demonstration: TAMPICO indictment
- For Day 14, Block 6 demonstration
 - TAMPICO plea agreement
 - Example PSIR
 - 1326 Sentencing Guideline
 - Sentencing Table
 - TAMPICO J&C

X. ATTACHMENTS

To be attached to the student thumb drive:

- Federal Court Forms - AO 91 – Criminal Complaint, Criminal Complaint Template and Explanation, AO 442 – Warrant for Arrest, AO 93 – Search Warrant, AO 106 – Application and Affidavit for Search Warrant, Application for Search Warrant Template and Explanation
- Phase 8 documents – AO 442, AO 91, AO 93, AO 106, Affidavit, Description of items to be seized, Description of place to be searched
- Attachments for instructor demonstration:
 - Example suppression order
 - Example criminal complaints and arrest warrants
 - Example Applications for SW and SW
 - Example affidavits
 - Example indictments
 - Example J&C

XI. REFERENCES

- Federal Law Enforcement Training Center, Legal Division Handbook, 2009.
- Immigration Law Handbook, Gould Publications, 2006 and 2008.
- "2010 Federal Sentencing Guideline Manual." 01 Nov 2010 available at http://www.usc.gov/Guidelines/2010_guidelines/index.cfm
- "2010 Federal Sentencing Guidelines." 01 Nov 2010 available at http://www.usc.gov/Guidelines/2010_guidelines/Manual_PDF/Sentencing_Table.pdf
- Final Report on the Impact of United States v. Booker on Federal Sentencing. United States Sentencing Commission. 2006.
- (b)(6),(b)(7)(C) Acting Director, Office of Detention and Removal, "Prosecution Reporting", 08 Sept, 2008

- Forman, Marcy M., Director, Director, Office of investigations, and Torres, John P., Director, Office of Detention and Removal, "DRO/OI Protocols", 20 August, 2007.
- Tangeman, Anthony S., Director, Office of Detention and Removal, "Addition of Chapter 19 Section 8 (Prosecutions) of the Detention and Deportation Officer's Field Manual", 03 September, 2003.

OUTLINE OF INSTRUCTION

INTRODUCTION

Instructor Notes: The presentation of the material contained in this lesson will be in blocks of instruction over the entire three week period of the FOTP-P course. These blocks will be as follows: Day 1 2 hours; Day 3 1 hour; Day 6 1 hour; Day 11 1 hour; Day 12 1 hour; Day 14 4 hours; and, Day 15 2 hours. Blocks of instruction are followed by labs in which the students, working in teams of 8, will then practice what was taught. The final block of instruction will not only summarize the ERO Prosecution lesson, but the entire FOTP-P course to include a recap of the CCS.

Note: RAPPORT AND OPENING STATEMENT

Welcome students to class; state this is the ERO Prosecutions lesson, and provide a brief description of the lesson from this syllabus. The lead instructor must introduce himself/herself and all co-instructors. Provide example(s) of his/her own personal experience executing warrants in the field.

I. Motivation

ERO has expanded its program to include primary responsibility for non-investigative administrative arrests, e.g. Law Enforcement Agency Response (LEAR) units, Criminal Alien Program (CAP) units, Violent Criminal Alien Section (VCAS), Joint Criminal Alien Removal Taskforce (JCART) and National Fugitive Operations Program (NFOP) units. All ERO officers will encounter aliens in violation of federal crimes during the course of their duties.

While some offices have a dedicated VCAS unit responsible for presenting the case for criminal prosecutions, others do not. Officers from all ERO units may find themselves responsible for the criminal prosecution of cases; therefore, successful prosecution of these individuals depends on all of you!

This lesson will help you recognize violations of federal law, properly charge an individual, and successfully complete the prosecution.

II. Objectives

A. Terminal Performance Objective(s)

Condition: Given a field situation in which the elements of a federal crime exist,

Behavior: the ERO officer will recognize that a crime has been committed, determine if the case should be presented for federal prosecution, and follow the steps required for the successful completion of that prosecution,

Criterion: in accordance with federal statutes and the Federal Rules of Criminal Procedure (FRCrMP).

- B. Final P.E. TEAM Assessment: The final P.E. includes writing an operational plan; demonstrating proper approach and stacking, breaching and ballistic shield and entry tactics; executing SW paperwork; and, seizing evidence. Students whose team fails to achieve an overall 70% will be given the opportunity to remediate. The failure can result from a critical error (automatic failure) or failure to achieve an overall 70% on the scenario. Critical errors are highlighted on the Final P.E. Team Assessment Checklist. If the team waives the opportunity to remediate, they will immediately participate in a modified practical exercise. Students whose team passes the remedial will receive 70% on that scenario. Student's whose team fails the remedial practical exercise will not receive a certificate of graduation. These students will receive a certificate of attendance.

B. Enabling Performance Objectives

EPO #1 Recognize when an alien is in violation of federal criminal law.

EPO #2 Coordinate with the U.S. Attorney's Office and the U.S. District Court, as well as other agencies involved in the prosecution process.

EPO #3 Follow federal court procedures (based on the FRCrMP).

EPO#4 Prepare various documents used in federal court.

III. Advance Organizer of Main Ideas

AO can be generally stated here, as a comparison to the administrative process.

As an ERO officer, you already are accomplishing the above objective from the administrative perspective. ERO officers recognize that a violation of the INA has occurred, and determine if the alien will be placed in removal proceedings. For the removal process to run properly, ERO officers coordinate with a number of DHS and outside entities to include trial attorneys, EOIR, detention facilities, transportation companies and foreign consulate. Additionally, a number of procedures must be adhered to, e.g., preparing and serving removal forms, detaining or releasing pending removal hearing, and notifying aliens as well as appointed attorneys as the case moves through the stages. Finally, deadlines must be met, e.g., when the alien appears before the IJ, serving the alien with particular forms and how long an alien can be held post order.

As each block of instruction is presented, the instructor will re-motivate and reorient the student to that particular EPO by using the above advance organizer.

IV. Review of Prerequisites

To proceed with the lesson you must first be familiar with the following:

- (b)(6),(b)(7)(C) Acting Director, Office of Detention and Removal, "Prosecution Reporting", 08 Sept, 2008
- Forman, Marcy M., Director, Director, Office of investigations, and Torres, John P., Director, Office of Detention and Removal, "DRO/OI Protocols", 20 August, 2007.
- Tangeman, Anthony S., Director, Office of Detention and Removal, "Addition of Chapter 19 Section 8 (Prosecutions) of the Detention and Deportation Officer's Field Manual", 03 September, 2003.

Instructor Notes: Direct students to thumb drive which contains copies of the above and quickly review.

V. Agenda

- BLOCK 1 – Day 1: EPO#1 – Review and discuss U.S. Code provisions that aliens violate
- Review affidavits and indictments that correspond with the federal violations
- BLOCK 2 – Day 3: EPO #2 – Coordination with USAO / AUSA and USMJ
- Review case with instructor(s) and discuss presentation
- Phase #3 – Day 3: Present case to AUSA
- BLOCK 3 – Day 6: EPO #4 – Federal court forms
- Review example federal court forms and attachments
- Phase #8 – Day 6: Federal court forms
- Phase #10 – Present court documents to the USMJ
- BLOCK 4 – Day 11: EPO #2 and #3 – USMS/PTSO/Initial Appearance
- Phases #13-14 – Day 12: Execution of criminal warrants
- BLOCK 5 – Day 12: EPO #3 – FRCrmP – Pre-trial Release/Detention - Grand Jury
- Review the (b)(6),(b)(7)(i) indictment
- Phase #18 – Day 13: Preliminary Hearing/Detention Hearing
- Phase #22 – Day 13: Grand Jury (Final Test of Activity)
- BLOCK 6 – Day 14: EPO #4 – FRCrmP – Arraignment through Sentencing; SME U.S. Probation
- BLOCK 7 – Day 15 – Summary of ERO Prosecutions as well as entire CCS.
- Day 15 – Remediation for P.E. will be conducted if necessary.

INSTRUCTION

Instructor Notes: A power point has been created for the lecture. Demonstration will occur simultaneous to instruction by referring students to course materials related to federal prosecutions.

Power point has been split into 7 sections, corresponding to each of the 6 blocks of instruction and the summary. Material from more than one EPO may be presented together during one block of instruction, as all 4 EPO's are interrelated and interdependent.

The first block of instruction will cover all of EPO #1, and will be conducted on training day 1 for 2 hours.

I. Explanation

A. EPO #1 - Recognize when an alien is in violation of federal criminal law.

1. 8 USC 1253(a)(1) – Failure to depart (INA 243(a))

In general any alien against whom a final order of removal is outstanding by reason of being a member of any of the classes described in section USC 1227(a) of this title, who

- a. Willfully fails or refuses to depart from the United States within a period of 90 days from the date of the final order of removal under administrative processes, or if judicial review is had, then from the date of the final order of the court [1253(a)(1)(A)],
- b. Willfully fails or refuses to make timely application in good faith for travel or other documents necessary to the alien's departure [1253(a)(1)(B)],
- c. Connives or conspires, or takes any other action, designed to prevent or hamper or with the purpose of preventing or hampering the alien's departure pursuant to such [1253(a)(1)(C)], or
- d. Willfully fails or refuses to present himself or herself for removal at the time and place required by the Attorney General pursuant to that order [1253(a)(1)(D)],

shall be fined under title 18, or imprisoned not more than four years (or 10 years if the alien is a member of any of the classes described in paragraph (1)(E), (2), (3), or (4) of section 1227(a) of this title), or both.

2. 8 USC 1253(b) – Willful failure to comply with terms of release under supervision (INA 243(b))

- a. An alien who shall willfully fail to comply with regulations or requirements issued pursuant to section 1231(a)(3) (OSUP) of this title, or
- b. Knowingly give false information in response to an inquiry under such section

shall be fined not more than \$1000 or imprisoned for not more than one year, or both.

Instructor Notes: Students should follow along using the Immigration Law Handbook provided with their course material. DEMONSTRATION: Refer student to thumb drive for example 1253(a) and (b) cases, specifically the affidavits, as these documents cover the elements discussed above.

3. 8 USC 1326(a) – Reentry of removed alien (INA 276)

In general, subject to subsection (b) of this section, any alien who-

- a. has been denied admission, excluded, deported, or removed, or has departed the United States while an order of exclusion, deportation, or removal is outstanding, and thereafter
- b. enters, attempts to enter, or is at any time found in, the United States, unless
 - i. prior to his reembarkation at a place outside the United States or his application for admission from foreign contiguous territory, the Attorney General has expressly consented to such alien's reapplying for admission; or
 - ii. with respect to an alien previously denied admission and removed, unless such alien shall establish that he was not required to obtain such advance consent under this or any prior Act,

shall be fined under title 18, or imprisoned not more than 2 years, or both.

4. 8 USC 1326(b) – Criminal penalties for reentry of certain removed aliens (INA 276)

Notwithstanding subsection (a) of this section, in the case of any alien described in such subsection -

- a. Whose removal was subsequent to a conviction for commission of three or more misdemeanors involving drugs, crimes against the person, or both, or a felony (other than an aggravated felony), such alien shall be fined under title 18, imprisoned not more than 10 years, or both [1326(b)(1)];
- b. whose removal was subsequent to a conviction for commission of an aggravated felony, such alien shall be fined under such title, imprisoned not more than 20 years, or both [1326(b)(2)];
- c. who has been excluded from the United States pursuant to section 1225(c) of this title because the alien was excludable under section 1182(a)(3)(B) of this title or who has been removed from the United States pursuant to the provisions of 8 USC 1531 et seq, and who thereafter, without the permission of the Attorney General, enters the United States, or attempts to do so, shall be fined under title 18 and imprisoned for a period of 10 years, which sentence shall not run concurrently with any other sentence [1326(b)(3)]; or
- d. who was removed from the United States pursuant to section 1231(a)(4)(B) of this title who thereafter, without the permission of

the Attorney General, enters, attempts to enter, or is at any time found in, the United States (unless the Attorney General has expressly consented to such alien's reentry) shall be fined under title 18, imprisoned for not more than 10 years, or both [1326(b)(4)].

Instructor Notes: 1326(a) sets forth the elements and 1326(b) lists the penalties. Most officer will already be familiar with 1326(b)(1) and (b)(2). 1326(b)(3) is most likely handled by the FBI and/or H.S.I. 1326(b)(4) is a criminal penalty to the reentry charge whereas 1326(c) allows for the incarceration for the remainder of the sentence which was pending at the time of deportation.

The following is the acceptable language to use when requesting an A-File from the RDF:

Hello RDF-

The subject related to this A-file will be facing criminal charges. I need the entire physical file to go before a Grand Jury and obtain an indictment on felony charges. **The United States Attorney's Office requires that we have the original physical file, as it will be used as evidence in the criminal case. We can NOT substitute copies as evidence.** Please release the file under Interim Guidance issued by NSRV.

DEMONSTRATION: Refer student to thumb drive or participant workbook for example 1326 cases, specifically the affidavits, as these documents cover the elements discussed above.

5. 18 USC 922(g)(5) – Alien in possession of a firearm

It shall be unlawful for any person -

- a. who, being an alien –
 - i. is illegally or unlawfully in the United States [922(g)(5)(A); or
 - ii. except as provided in subsection (y)(2), has been admitted to the United States under a nonimmigrant visa [922(g)(5)(B);
- b. to ship or transport in interstate or foreign commerce, or possess in or affecting commerce, any firearm or ammunition;
- c. or to receive any firearm or ammunition which has been shipped or transported in interstate or foreign commerce.
 - i. EXCEPTIONS exist under (y)(2)
 - ii. There must be a connection with commerce, e.g., the gun crossing state lines.
 - iii. ATF can provide an interstate nexus report.
 1. Call 1-800-800-3855 – The ATF Joint Support Ops Center (24 hours)
 2. Call 1-800-788-7133 – The AFT National Tracing Center – (specifically for LEO's)

shall be fined under title 18, or imprisoned not more than 10 years, or both.

Instructor Notes: DEMONSTRATION: Refer student to thumb drive or participant work book for example 922 cases, specifically the indictment which lists the elements discussed above.

6. 18 USC 911 - False Claim to U.S. Citizenship

Whoever falsely and willfully represents himself to be a citizen of the United States shall be fined under this title or imprisoned not more than three years, or both.

7. 8 USC 1325(a) - Improper time or place; avoidance of examination or inspection; misrepresentation and concealment of facts (INA 275)

Any alien who

- a. enters or attempts to enter the United States at any time or place other than as designated by immigration officers, or
- b. eludes examination or inspection by immigration officers, or
- c. attempts to enter or obtains entry to the United States by a willfully false or misleading representation or the willful concealment of a material fact,

shall, for the first commission of any such offense, be fined under title 18 United States Code, or imprisoned not more than 6 months, or both, and, for a subsequent commission of any such offense, be fined under title 18, United States Code, or imprisoned not more than 2 years, or both.

Instructor Notes: DEMONSTRATION: Refer student to thumb drive or participant workbook for example 1325 cases, specifically the affidavits, as these documents cover the elements discussed above.

8. 18 USC 1028(a) – Fraud and related activity in connection with identification documents.

Whoever, in a circumstance described in subsection (c) of this section -

- a. (1) knowingly and without lawful authority produces an identification document, . . . or a false identification document; .
- b. (6) knowingly possesses an identification document . . . that is or appears to be an identification document . . . of the United States . . . which is stolen or produced without lawful authority knowing that such document . . . was stolen or produced without such authority;
- c. (7) knowingly transfers, possesses, or uses, without lawful authority, a means of identification of another person with the intent to commit, or to aid or abet, or in connection with, any unlawful activity that constitutes a violation of Federal law, . . . ;

Subsection (c) – The circumstance referred to in subsection (a) of this section is that –

- a. (1) the identification document, . . . , or false identification document is or appears to be issued by or under the authority of the United States . . . ; [or]
- b. (3) either -

(A) the . . . transfer, possession, or use prohibited by this section is in or affects interstate . . . commerce, including the transfer of a document by electronic means; or

(B) the means of identification, identification document, false identification document . . . is transported in the mail in the course of the production, transfer, possession, or use prohibited by this section.

Punishment –

a. Imprisonment for not more than 15 years or a fine under title 18 of the U.S. Code, or both, if the offense is for the production of an identification document or false identification document that is or appears to be an identification document issued by or under the authority of the United States or a birth certificate, driver's license or personal identification card.

b. Imprisonment for not more than 5 years or a fine under title 18 of the U.S. Code, or both, if the offense is for any other production, transfer, or use of a means of identification, an identification document, or a false identification document, or an offense under paragraph (7) of subsection (a).

9. 18 USC 1028A – Aggravated identity theft

a. Whoever during and in relation to any felony violation enumerated in subsection (c), knowingly transfers, possesses, or uses, without lawful authority, a means of identification of another person shall, in addition to the punishment provided for such felony, be sentenced to a term of imprisonment of 2 years. [1028A(1)]

b. Flores-Figueroa v. United States - the government must show that the defendant knew that the "means of identification" actually belonged to "another person."

c. subsection (c) includes: 42 USC 408(a)(7)(B), Social Security fraud; 18 USC 1546, fraud documents; 18 USC 1028(a), identity document fraud; and, 18 USC 911, false claim to US Citizenship.

10. 18 USC 111(a)(1) – Assaulting, resisting or impeding certain officers or employees.

Whoever -

a. forcibly assaults, resists, opposes, impedes, intimidates, or interferes with any person designated in 18 USC 1114 while engaged in or on account of the performance of official duties [shall be punished in a manner set forth by law];

b. 18 USC 1114 includes "any officer or employee of the United States or of any agency in any branch of the United States Government . . . while such officer or employee is engaged in or on account of the performance of official duties."

c. Punishment –

- i. For acts constituting a simple assault, imprisonment for not more than a year or a fine under title 18, or both;
- ii. For acts involving physical contact with the victim of the assault or the intent to commit another felony, imprisonment for not more than 8 years or a fine under title 18, or both; or
- iii. Enhanced penalty – If the acts described in subsection (a) involve the use of a deadly or dangerous weapon or inflicts bodily injury, a term of imprisonment of not more than 20 years or a fine under title 18, or both.

11. 18 USC 1001(a) – Statements or entries generally.

- a. Whoever, in any matter within the jurisdiction of the executive. . . branch of the Government of the United States, knowingly and willfully –
 - (1) falsifies, conceals, or covers up by any trick, scheme, or device a material fact;
 - (2) makes any materially false, fictitious, or fraudulent statement or representation; or
 - (3) makes or uses any false writing or document knowing the same to contain any materially false, fictitious, or fraudulent statement or entry[shall be punished in a manner set forth by law].
- b. Punishment – imprisonment for not more than 5 years or a fine under title 18, or both

12. 18 USC 1015(e) – Naturalization, citizenship or alien registry

- a. Whoever knowingly makes any false statement or claim that he is, or at any time has been, a citizen or national of the United States, with the intent to obtain on behalf of himself or any other person, any Federal or States benefit or service, or to engage unlawfully in employment in the United States [shall be punished in a manner set forth by law];
- b. Punishment – imprisonment for not more than 5 years or a fine under title 18.

13. OTHER

- a. 8 USC 1324(a) – Bringing in and harboring certain aliens
- b. 18 USC 1546(a) and (b) – Fraud and misuse of visas, permits, and other documents

Instructor Notes: Discuss with students that there are many federal violations that they may encounter in their daily job, and both Title 8 and Title 18 can be found in their Immigration Law Handbook.
DEMONSTRATION: Refer students to thumb drive or participant workbook for examples of the above listed crimes. There is an indictment as well as an affidavit which covers many of the above listed crimes.

Instructor Notes: BLOCK 1 BREAK POINT - summarize this block of instruction and ensure that the following has been covered:

- The objective for that block of instruction was met
- Summarize the information
- Remediate by reviewing in greater detail or giving the student additional practice
- Preview of what is to come in the next block of instruction (sets expectations for future learning)

Instructor Notes: BLOCK 2 START POINT: Day 3 – 1 hour

Bring the students back into the lesson by doing the following:

- Remotivate the students to why ERO Prosecutions is essential to their jobs
- Reorientation to ERO Prosecutions via Advanced Organizer
- Tell the students what to expect in this block of instruction and how it builds on the previous block
- Briefly review previous lesson's key topics
- Ask if anyone has any questions about the previous lesson

TO AID WITH MOTIVATOR, REORIENTATION VIA AO and TODAY'S AGENDA:

Begin by reviewing what students already know, i.e., that administrative arrests can be made, with or without a warrant, when an immigration officer has probable cause to believe that a violation of the INA was committed and that the alien committed it. This is similar to the ERO officer's authority to make a criminal arrest. Discuss that an administrative arrest may occur before prosecution is contemplated, e.g., LEAR or NFOP aliens encountered and later found to be in violation of criminal law. Then discuss situations when officer may already be aware of the location of a criminal alien, and seek to obtain USAO concurrence before taking any action, e.g., CAP and NFOP aliens located but not yet encountered (the CCS scenario).

Orient the students to this EPO (COORDINATION) by using the above discussion. Regardless of when or how the federal court procedures are set into motion, a number of components in the Department of Justice (DOJ) and the U.S. District Court will be involved. An ERO officer needs to be aware of the entities involved in federal prosecutions and the need for coordination in order to provide an opportunity for the system to operate smoothly.

B. EPO #2 – Coordinate with the U.S. Attorney's Office and the U.S. District Court, as well as other agencies involved in the prosecution process.

1. U.S. Attorney's Office (USAO)/Assistant U.S. Attorney (AUSA)
 - a. Contact and liaison with the USAO/AUSA, preferably prior to the criminal arrest of any alien
 - b. Present the case to the AUSA
 - i. Accept
 1. Meet further to discuss the case and/or provide copies of supporting reports and evidence

2. Prepare applicable court documents (EPO#4) and forward copy of the draft documents for AUSA review
 3. Discuss the expected schedule of events
 4. Determine who (AUSA or ERO) will make the necessary contacts with the other DOJ and Court entities (USMJ, Clerk of Court, PTSO, USMS)
- ii. Decline

Instructor Notes: Don't always expect an immediate acceptance or declination as the AUSA may request further information before making the final decision. Cases are REFERRED and criminal matters are OPENED, but not always prosecuted. Each district will vary in procedures depending on a variety of factors, such as size of the office or facts of the case. EX: Some officers will have to draft the court documents on their own, others will sit with the AUSA as the documents are being prepared, and others will not be responsible for any documents.

2. U.S. Magistrate Judge (USMJ) / Clerk of Court

- a. Considers the Criminal Complaint, with supporting Affidavit
 - i. Arrest Warrant (AW) is signed
 - ii. Complaint is formally filed with the Clerk of Court
 - iii. Original AW is maintained by the USMS, and only a copy is provided to the ERO officer
 - iv. Once the defendant is arrested, he/she will make an Initial Appearance before the USMJ
- b. Considers the Application for a Search Warrant, with supporting Affidavit
 - i. Search Warrant (SW) is signed
 - ii. The officer is then provided with the original warrant while the Application and related documents will be held, whether by the USMJ or the Clerk of Court.
 - iii. Execute the SW
 - iv. Provide a copy of the SW and a receipt for the property taken to the person from whom the property was taken [or left at the place where it was taken]
 - v. Make a prompt return to the USMJ designated on the warrant.
 - vi. The SW and associated documents will be filed with the Clerk's Office after the warrant has been executed and the return made to the USMJ.
- c. Coordinate with the USMJ regarding the expected date of SW execution, whether any person(s) are likely to be arrested (and will require an Initial Appearance), and expected date of return.

U.S. Immigration and Customs Enforcement Lab Exercise Plan

Administration

I. Location/Facility Requirements

Computer Lab with (b)(7)(E) (phases 2, 4-9, 11, 15 - 17, 19 - 21, 23 - 26)
24 student stations
Instructor station with presentation equipment
2 break-out rooms for all CCS phases
3 Raid Houses for CCS phases 13-14 and the final P.E. (1325, 1327 and 1328)
1 USMJ Office for CCS phase 10
1 Court Room for CCS phases 18 and 22

II. Staff Requirements

The three CCS coordinators (assigned to the three 8-person FOTs) will be required to be present during ALL phases of the FOTP-P CCS. Additional instructors will be expected to be present as follows:

Phases 3, 8, 10, 13-14, 18, 22: one additional LEGAL instructor

Phase 12: 6 instructors, i.e., 2 per FOT, will be required for the pre-operation brief. There should be a TI instructor along with the CCS-C per FOT. OPTION: If each FOTs briefing occurs at a different time, one TI may choose to float between all three FOTs.

Phase 13-14: A minimum of 9 instructors, i.e., 3 per raid house, will be required during these phases. There should be at least one LEGAL instructor and two TI instructors per raid house.

Final P.E. Day 14: 6 instructors, i.e., 2 per FOT, will be required for the pre-operation brief. There should be a TI instructor along with the CCS-C per FOT. OPTION: If each FOTs briefing occurs at a different time, one TI may choose to float between all three FOTs.

Final P.E. Day 15: A minimum of 9 instructors, i.e., 3 per raid house, will be required during these phases. There should be at least one LEGAL instructor and two TI instructors per raid house.

III. Environment Conditions

N/A

IV. Transportation Requirements

Students will be assigned 5 ICE academy government vehicles to be distributed to the 3 FOTs. Students will be expected to use these vehicles during phases 13-14 of the FOTP-P CCS and during the final P.E., to transport themselves to and from the raid houses.

Instructor Notes: During instruction on Execution of Criminal Warrants (Day 7), further information relating to the rules of executing warrants will be provided. Students will be instructed to obtain the original SW and execute it within 14 days, between the hours of 6am and 10pm. FRCrmp 41(i) provides for the USMJ to deliver the SW and related papers to the clerk after the SW has been returned.

DEMONSTRATION: Together, all 3 FOTs and the instructor(s) will review the facts concerning (b)(6),(b)(7)(C) in order to prepare for the presentation as outlined in Phase 3 of the CCS Guide.

Instructor Notes: BLOCK 2 BREAK POINT - summarize this block of instruction and ensure the following was covered:

- The objective for that block of instruction was met
- Summarize the information
- Remediate by reviewing in greater detail or giving the student additional practice
- Preview of what is to come in the next block of instruction (sets expectations for future learning)

CCS PHASE #3: FOT's will now break into their groups to meet with their respective CCS-C. See CCS Guide for further instruction on Phase 3. Students will practice EPO #1 and #2 by reviewing their case to date, determining which federal violations have occurred, and finally presenting their case to the AUSA. The CCS-C will act as the "AUSA" while the ERO Prosecutions instructor will float among the groups to address any questions or concerns.

GO TO EPO #4 for BLOCK 3 STARTING POINT.

Instructor Notes: BEFORE LECTURE: CCS PHASE #10 DAY 11 – 3 hours: Students have just completed CCS Phases 10 – 12. Specifically, they have practiced EPO #2 and #4 by presenting their previously prepared federal court documents (Phase #8) to the USMJ for signature.

BLOCK 4 START POINT: Day 11 – 1 hour (occurs after CCS Phase #10-12 in which the FOT present the court documents to the USMJ for signature)

Bring the students back into the lesson by doing the following:

- Remotivate the students to why ERO Prosecutions is essential to their jobs
- Reorientation to ERO Prosecutions via Advanced Organizer
- Tell the students what to expect in this block of instruction and how it builds on the previous block
- Briefly review previous lesson's key topics
- Ask if anyone has any questions about the previous lesson

TO AID WITH MOTIVATOR, REORIENTATION VIA AO and TODAY'S AGENDA:

Begin by reviewing what students already know, i.e., just as coordinating with the Trial Attorney and EOIR is essential to getting the removal process started, so is coordination with the AUSA and USMJ. The case has been accepted for criminal prosecution and charging documents signed. In administrative cases, the job doesn't stop there. Officers continue to coordinate, e.g., detention facilities and consulates. This lesson will discuss coordination with other agencies involved in the criminal prosecution process.

Remind students that once the federal court procedure is set into motion, a number of components in the Department of Justice (DOJ) and the U.S. District Court will be involved. It is essential that they are aware of the entities involved in the prosecution of a defendant and the need for coordination in order for the system to operate smoothly.

3. U.S. Marshal's Service (USMS)
 - a. Requires advance notice that a prisoner is being brought in
 - i. Don't surprise the USMS
 - ii. In some districts, and under limited circumstances, the USMS deputies may provide transportation of your alien to the Initial Appearance
 - b. Unless other arrangements have been made, be prepared to:
 - i. deliver the defendant to the USMS
 - ii. complete USMS booking form (USM312)
 - iii. Wait for the court proceedings to take place
 - iv. Provide I-247
4. U.S. Pretrial Service Officer (PTSO)
 - a. In some districts, this is part of the U.S. Probation Office while in others, it is a separate entity
 - b. PTSO officers work for the federal judges
 - c. Important in the early stages of prosecution:
 - i. Conducts an interview of the defendant prior to the Initial Appearance
 - ii. Prepares a report the USMJ relies upon when determining whether or not the defendant will be detained during the proceeding or granted a bond
 - d. Be prepared to promptly transport the defendant to the USMS and to ensure the PTSO has sufficient advance notice
 - e. The failure to coordinate with the PTSO or to promptly transport a defendant to the USMS can result in a delay of the hearing

C. EPO #3 - Follow federal court procedures (based on the FRCrmp).

1. Initial Appearance (Rule 5, FRCrmp)
 - a. First step in the judicial process for a defendant
 - b. PURPOSE: Inform the defendant of the complaint or charges against him/her and of applicable procedural rights and right to counsel
 - c. **Rule 5(a)** – take defendant “without unnecessary delay” before the USMJ
 - d. Factors for WHEN:
 - i. Time of arrest
 - ii. Proximity to a federal courthouse
 - iii. BEST PRACTICE: Coordinate with the AUSA and/or Clerk of Court/USMJ
 - e. **WARRANTLESS ARREST**
 - i. Prepare a Criminal Complaint, supporting affidavit and AW
 - ii. Submit to USMJ for review BEFORE the Initial Appearance
 - f. **ARREST WITH WARRANT**

- i. Obtained through Criminal Complaint, Information or Indictment
- ii. See EPO #4

Instructor Notes: BLOCK 4 BREAK POINT - summarize this block of instruction and ensure that the following has been covered:

The objective for that block of instruction was met

- Summarize the information
- Remediate by reviewing in greater detail or giving the student additional practice
- Preview of what is to come in the next block of instruction (sets expectations for future learning)

Day 12 - CCS PHASE #13 - 14: FOT will be told that on Day 12, they will be executing the AW and SW at the residence of (b)(6), (b)(7)(C). See CCS Guide for further instruction on Phase 13-14. The next block of instruction will occur AFTER the warrant execution.

GO TO EPO #3, Topic 2 for BLOCK 5 STARTING POINT.

Instructor Notes: BEFORE LECTURE: Day 12, CCS PHASE #13-14 – 4 hours: FOTs just finished practicing the warrant execution and seizure of evidence.

BLOCK 5 START POINT: Day 12 – 1 hour

Bring the students back into the lesson by doing the following:

- Remotivate the students to why ERO Prosecutions is essential to their jobs
- Reorientation to ERO Prosecutions via Advanced Organizer
- Tell the students what to expect in this block of instruction and how it builds on the previous block
- Briefly review previous lesson's key topics
- Ask if anyone has any questions about the previous lesson

TO AID WITH MOTIVATOR, REORIENTATION VIA AO and TODAY'S AGENDA:

Begin by reviewing what students already know, i.e., various stages in the removal process to include master hearing and requests by alien to be released (OR or Bond) while in proceedings, as well as other motions that may be filed. The criminal process is similar. The next stages of the FRCrM will now be covered. Again, it is essential that the ERO officer be aware of this process in order for a successful and smooth handling of the case.

2. Pretrial Release or Detention (18 USC 3141-3145)

a. PTSO Interview and Recommendation

- i. Prior to Initial Appearance
- ii. Pretrial service report is used by the USMJ when determining if a defendant will be detained or released
- iii. Coordinate with AUSA concerning issue of detention/release as the "release" of an alien will force the removal process to start
- iv. Cooperate with the PTSO to ensure all facts pertinent to the issue of detention/ release are conveyed before the PTSO report is completed

b. USMJ – Options for Detention/Bond

- i. Release defendant on own recognizance/unsecured bond

- ii. Release defendant under conditions including bond
- iii. Temporarily detain defendant until a detention hearing can be held
- iv. Temporarily detain to permit revocation of conditional release, deportation or exclusion
- v. Conduct detention hearing if both prosecution and defense are willing and prepared to proceed

Instructor Notes: Demonstration: Discuss situations in which aliens were not temporarily detained until detention hearing, e.g., pregnant or sole care provider. In some districts the USMJ will not be convinced that detention is warranted. What are the effects of this decision? Aliens may end up being removed prior to completion of criminal case. Provide I-247 immediately.

Discuss the differences that can occur between districts with regard to how a USMJ reacts / responds to the filing of an ICE detainer and the fact that the defendant is an illegal alien subject to removal.

3. Detention Hearing

- a. Generally held within 3 to 5 days
- b. Determines whether the defendant will be held in custody pending trial
- c. AUSA, through either the presentation of testimony by the officer or a proffer of the evidence, provides the USMJ with the government's case
- d. The defendant, through counsel, is permitted to present evidence and call witnesses, and to cross-examine any witness called by the AUSA.
- e. The Bail Reform Act
 - i. requires pretrial release of a defendant unless the USMJ determines that the defendant is either a risk of flight or a danger to any other person and the community
 - ii. Be prepared to testify as to why the alien is a flight risk and/or a risk to others.
- f. Discuss with the AUSA the importance of pretrial detention, and explain that it may not be possible to proceed with the prosecution if the defendant is not detained and already has a Removal Order

4. Preliminary Hearing (Rule 5.1, FRCrMP)

- a. Generally held within a reasonable time (no later than 14 days of the initial appearance if the defendant is in custody and no later than 21 days if not)
- b. Formal court proceeding used to determine whether the government has established probable cause exists to believe an offense has been committed and the defendant committed it
- c. The rules of evidence do not apply at a preliminary hearing and hearsay is admissible. Testimony given at the preliminary hearing (under oath) can be used to impeach an officer's testimony at a later proceeding.

- d. Defendants charged with a crime other than a petty offense are entitled to a preliminary hearing unless:
 - i. The defendant waives the hearing
 - ii. The defendant was indicted or charged in an information
 - iii. The government dismisses the case

Instructor Notes: Demonstration: Discuss prosecutors may seek to limit disclosure of additional evidence in the case beyond that necessary to satisfy that standard. The defense, however, often will seek to use the hearing as a means to obtain discovery; some judicial officers will limit the defense in its effort to obtain additional evidence while others will not.

Discuss how obtaining an Indictment rather than a Criminal Complaint is useful so that there will be no PH. (Goes back to Coordination EPO #2)

CCS Phase 18, Day 13, is the PH/DH. FOTs will practice testifying in a federal court proceeding during this phase. See CCS Guide, Phase 18 for further instruction.

- 5. Grand Jury (Rule 6, FRCrM)
 - a. Independent body operating under the authority and supervision of the district court
 - i. Empanelled by and functions supervised by a federal judge
 - ii. Larger districts may have grand juries meeting on a daily basis while smaller districts may have grand jury sessions only weekly or monthly
 - iii. Proceedings and "matters occurring before the grand jury" are SECRET
 - 1. encourages witnesses to come forward and testify freely and honestly
 - 2. minimizes risk that prospective defendants will flee or thwart investigations
 - 3. protects accused persons later exonerated
 - b. TRUE BILL
 - i. 16-23 jurors
 - ii. At least 12 agree probable cause crime committed and defendant committed it
 - iii. Indictment (or information in lieu of indictment) must be filed within 30 days of the date of arrest
 - c. The USAO schedules the cases/matters presented to the grand jury by AUSAs who:
 - i. Presents cases
 - ii. Calls and examines witnesses
 - iii. Issues grand jury subpoenas
 - iv. Present proposed indictments
 - d. Grand juries serve two primary purposes:
 - i. Return indictments – AUSA presents evidence and the grand jury decides if probable cause has been established (similar to preliminary hearing)

- ii. Investigate crimes – obtain testimony and other evidence officers cannot obtain
- e. Jencks Act – discussed in ERO Report Writing, EPO #1

Instructor Notes: Demonstration: Review the (b)(6),(b)(7)(C) indictment provided to students in their course materials.

Instructor Notes: **BLOCK 5 BREAK POINT** - summarize this block of instruction and ensure that the following has been covered:

The objective for that block of instruction was met

- Summarize the information
- Remediate by reviewing in greater detail or giving the student additional practice
- Preview of what is to come in the next block on instruction (sets expectations for future learning)

Day 13 - CCS PHASE #18: FOTs will break into their groups to meet with their respective CCS-C. See CCS Guide for further instruction on Phase 18 – The PH/DH.

Day 13 - CCS PHASE #22: FOTs will break into their groups to meet with their respective CCS-C. See CCS Guide for further instruction on Phase 22 – The grand jury hearing. THIS IS THE ERO PROSECUTION P.E.

The next block of instruction will occur on Day 14 and will finalize the FRCrmP (EPO #3) to include discussion of the arraignment, suppression hearing, guilty pleas or trial, and sentencing.

GO TO EPO #3, Topic 6 for BLOCK 6 STARTING POINT

Instructor Notes: **BLOCK 6 START POINT:** Day 14 – 4 hour

Bring the students back into the lesson by doing the following:

- Remotivate the students to why ERO Prosecutions is essential to their jobs
- Reorientation to ERO Prosecutions via Advanced Organizer
- Tell the students what to expect in this block of instruction and how it builds on the previous block
- Briefly review previous lesson's key topics
- Ask if anyone has any questions about the previous lesson

TO AID WITH MOTIVATOR, REORIENTATION VIA AO and TODAY'S AGENDA:

Begin by reviewing what students already know, i.e., the various stages in the removal process include the filing of motions and special requests such as for voluntary departure. The criminal process is similar. The next stages of the FRCrmP will now be covered. Again, it is essential that the ERO officer be aware of this process in order for case to run smoothly and successfully.

OPTIONAL: On Day 14, during Topic 10, a SME from U.S. Probation may present the remaining portion of Block 6 (EPO 3 – Point 10). Whether legal instructor or SME, the following information will be covered during instruction and demonstration.

6. Arraignment (Rule 10, FRCrMP)
 - a. Occurs after the indictment or information has been filed
 - b. If this is the first time in court, this hearing actually constitutes the initial appearance as well as the arraignment
 - c. Process – the defendant:
 - i. Receives or confirms receipt of a copy of the indictment
 - ii. Is informed of the charges [and advised of his/her rights]
 - iii. Is asked to enter a plea to the charge(s)
 - iv. Generally a not guilty plea is entered at the arraignment
7. Evidence, Chain of Custody and the Discovery Process (Rule 16 and the Brady Doctrine)
 - a. Chain of Custody – Discussed in Evidence LP
 - i. Required to establish where the evidence has been since its discovery until it is offered into evidence in court
 - ii. Documents any alterations to the evidence
 - iii. The person who located and/or first seized the evidence should appear as the first entry on the chain of custody
 - iv. In some instances, a well-documented chain of custody may lead to a stipulation between the prosecutor and defense attorney that eliminates the need for witnesses to testify
 - b. Discovery (Rule 16, FRCrMP)
 - i. The right of the defense and prosecution to be made aware of evidence which the other party possesses
 - ii. Individual district courts have the authority to regulate discovery and inspection
 1. Discuss with the AUSA what is needed in order to comply with the government's obligation, and what deadlines may be involved
 2. Failure to comply can have serious consequences
 - iii. As a general rule, the government's discovery obligation involves turning over the evidence in the case, particularly that which will be used to prove the guilt of the defendant, to the defense
 - iv. It is common that the discovery provided to the defense will be broader than that which is strictly required and that the obligation of the defense is not as stringently enforced as that of the prosecution
 - v. The primary burden of discovery will fall upon the ERO officer
 1. make advance copies of documents
 2. maintain orderly prosecution case file folders
 - vi. The defense is entitled to disclosure of:
 1. Oral statements made by the defendant
 2. Defendant's prior criminal record (ex: NCIC or J&C)

3. To inspect, copy or photograph:
 - a. relevant statements by the defendant
 - b. documents or tangible objects that are prospective exhibits (ex: executed I-205)
 - c. reports of examinations and tests (FDL)
- vii. If requested, the government is also required to provide a written summary of any testimony of an expert witness intended to be used at trial
- viii. Internal government documents, such as an I-213, are not discoverable under Rule 16.

Instructor Notes: DEMONSTRATION: Go through the (b)(6),(b)(7)(C) prosecution case file folder and discuss the documents and reports that would qualify under Discovery. EX: Copy of (b)(6),(b)(7)(C) A-file, ROIs, certified J&C, FDL and CIS report, FD-249s, executed I-205 and IJ Order.

- c. Brady doctrine (Brady v. Maryland, 373 U.S. 83 (1963))
 - i. The government must provide to the defense any evidence favorable to an accused
 - ii. Requires the government to disclose evidence indicating that another person may have committed the offense that has been charged or that which supports an alibi or affirmative defense
 - iii. The doctrine covers evidence that is exculpatory or favorable in nature, such as that indicating that a defendant may not be guilty, as well as that which can be used to lessen any punishment that may be imposed.
- d. Giglio (Giglio v. United States, 405 U.S. 150 (1972))
 - i. The prosecution is required to disclose to the defense information that tends or can be used to impeach or lessen the credibility of government witnesses called at trial.
 - ii. The obligation relates to federal officers and agents, as well as to those with less savory backgrounds and/or employment
 - iii. Evidence that can be used to impeach a witness includes that which may make the witness less believable or which contradicts something he/she may have said.
 - iv. Information includes:
 1. payment of money to a witness for information
 2. plea agreements
 3. agreements providing immunity to a witness
 4. prior criminal convictions
 5. pending criminal charges
 6. specific instances of inconsistent statements
 7. anything affecting the credibility or truthfulness of a witness
 8. character evidence of untruthfulness

9. a finding of lack of candor during an administrative inquiry
 10. any credible allegation of misconduct that reflects upon truthfulness or bias.
- v. ERO officers are obligated to disclose potential Giglio information about themselves to an AUSA handling a particular case so that a determination can be made concerning what, if anything, must be turned over to the defense

Instructor Notes: DEMONSTRATION: Discuss a federal mistrial which occurred because of Brady/Giglio issues with federal LEO's. (Discuss: (b)(6), (b)(7)(C) AZ Bombing Case / International Bribery Case / MA Firearms Case.) For purposes of the CCS, discuss the victim, HMC, and ask students if they think the case would have been different if HMC had prior criminal convictions for fraud?

8. Suppression Motion and Hearing (12(b)(3), FRCrMP)
 - a. The defense is allowed to file a motion to suppress evidence it does not want presented to the jury
 - b. A waiver of this occurs when the defense fails to submit a suppression motion before trial. EXCEPTION:
 - i. Relief may granted by the trial court for "good cause"
 - ii. The defense did not receive documentation providing a basis for the challenge until shortly before the motion was filed
 - iii. Some courts will not excuse the failure to exercise due diligence in discovering the basis for a suppression motion; rather, they will expect a defendant to inform counsel of facts pertinent to the case and require the attorney to properly investigate the details of what occurred
 - c. The defense will likely allege that one or more constitutional violations led to the improper seizure of evidence or to an unlawful confession
 - d. Work with the AUSA to ensure that discovery materials are being provided in a timely manner and in compliance with the applicable rules
 - e. Once a motion to suppress is filed, the case officer should be prepared to assist with:
 - i. Gathering relevant facts
 - ii. Contacting and arranging for necessary witnesses to be interviewed by the AUSA
 - iii. Reviewing the government's official response for factual accuracy
 - iv. Being available to testify
 - f. SUPPRESSION HEARING
 - i. Conducted outside the presence of any selected jury

- ii. The judicial officer will listen to the testimony, to include the law enforcement officers involved in the challenged events, and review any evidence that is introduced
- iii. The judicial officer will decide whether the challenged evidentiary items and/or statements will be admitted for consideration by the jury.
- iv. 18 U.S.C. 3501(a) – in the case of a confession
 - 1. The trial judge will determine any issue as to the voluntariness of a confession
 - 2. If deemed to have been made voluntarily, the confession will be admitted and the jury is permitted to hear evidence relevant to the voluntariness issue and will be instructed “to give such weight to the confession as the jury feels it deserves under all the circumstances.”
- v. The fate of the government’s case may rise or fall on the admission of the challenged evidence which is why the ERO officer must work closely with the AUSA to ensure issues are litigated as thoroughly and accurately as possible.

Instructor Notes: DEMONSTRATION: Discuss Wichita, KS 911 Suppression hearing (DO (b)(6),(b)(7)(C) which is located on their student thumb drive. Engage students in a conversation on what (b)(6),(b)(7)(C) may file to suppress.

- 9. Determination of Guilt – Guilty Plea (11, FRCrM) or Trial (23, FRCrM)
 - a. Plead guilty
 - i. May require a written plea agreement
 - ii. AUSA will draft the proposed agreement
 - iii. Investigating officer/agent may or may not be consulted
 - b. Guilty plea hearing
 - i. May require the officer to present the evidence that provides a factual basis for the offense(s)
 - 1. Officer may be sworn and provide testimony under oath; or,
 - 2. Summary of facts will be presented in court by the AUSA
 - ii. Regardless, the case officer will want to attend the hearing in order to observe what occurs and properly document the event in the case file
 - c. “Pick 12” (proceed to trial)
 - i. A defendant has the right to:
 - 1. a jury trial
 - 2. be represented by counsel
 - 3. confront and cross-examine witnesses called by the prosecution

V. Supplies and Equipment

A. Student Provided:

- Duty Belt equipment
- Body Armor cover/vest

B. Academy Provided:

- Simulated Training Weapon (M4 and P229)
- Government Vehicles
- Participant Workbooks (containing documents required for entire CCS)
- Thumb Drives (containing all forms and documents as listed on each individual LP – entire CCS)
- Pocket-sized Memorandum Notebooks
- 6-part Classification File Folder
- (b)(6),(b)(7) A-file
- Subpoena Log Book
- (b)(6),(b)(7) Field Operation Work Folder
- "Mock" Evidence
- Evidence Kit
- Evidence Vault Log Book

VI. Risk Considerations

Phases 13-14 and P.E. (Day 15)

VII. Attached Documents

A. For Student Use (Located on Thumb Drive or in their Participant Workbook)

- Orientation – Phase Leader Assignment sheet
- Phase 1 – (b)(6),(b)(7)(C) Jail paperwork
- Phase 1 – (b)(6),(b)(7) A-file
- Phase 1 – (C) Records checks
- Phase 2 – DRAFT I-138
- Phase 2 - Utility Company response
- Phase 4 – (b)(7)(C) CM Opening Narrative
- Phases 5-7, 15-16, 21, 23, 25 – (b)(7)(C) CM Reports
- Phase 6 – Surveillance Notes
- Phase 7 - Victim interview notes
- Phase 8 – DRAFT Federal Court Documents
- Phase 9 – (b)(6),(b)(7) FOW and Field Operation Work folder
- Phase 9 – Local PD Notification and Intelligence
- Phase 9 – Aerial Photo and Maps
- Phase 9 – Use of Force Continuum
- Phase 9 – DRAFT ICEEOPLAN
- Phase 11 – DRAFT SPEAR template and narrative
- Phase 13 – Evidence Kit (with multiple blank documents necessary for SW/AW execution)
- Phase 14 – CD in Evidence Bag and related 6051S
- Phase 14 – (b)(6),(b)(7)(C) I-213
- Phase 14 – (b)(6),(b)(7)(C) I-247

4. elect to present any evidence and subpoena witnesses to testify
5. remain silent and no inference of guilt is to be drawn by the jury from a decision to not testify
6. request a bench trial (no jury)
- ii. The government has the burden of proving the guilt of the defendant beyond a reasonable doubt
- iii. The jury determines if a guilty verdict will be returned, i.e., if the government has met its burden
- d. Speedy Trial Act
 - i. Trial must begin within 70 days of the public filing of the indictment or information; or
 - ii. From the date the defendant appeared before a judicial officer of the court in which such charge is pending, whichever date last occurs.
 - iii. Time may be excluded from the 70 day period for such matters as pending motions and consideration of a plea agreement
 - iv. Know what is likely to occur so that you will be able to comply with discovery obligations, have all of the evidence and witnesses available, and be prepared to try the case

Instructor Notes: DEMONSTRATION: Review the (b)(6),(b)(7) plea agreement provided to students in their course materials. Compare to the indictment and discuss how some of the charges will be dismissed.

10. Sentencing

a. Pre-Sentence Investigation Report (PSR)

- i. A U.S. Probation officer conducts an investigation and prepares report
- ii. The report sets forth the procedural status of the case and personal information relating to the defendant
- iii. The report focuses on the facts relating to the commission of the instant offense(s), including circumstances that may lead to a higher sentence through adjustments or enhancements under the guidelines, and the defendant's criminal history
- iv. The ERO officer may be contacted regarding facts in the PSR concerning the offense and the defendant, as you may know more about the case and the defendant than the probation officer, particularly cases involving aliens
- v. Prior to sentencing, both the government and the defense will have an opportunity to review and to object to portions of the PSR.
 1. The probation officer will attempt to resolve disputes before a sentencing hearing

2. The district judge will rule on any unresolved issues before imposing sentence
- b. Federal sentencing guidelines focus primarily on two factors:
 - i. The conduct associated with the offense, including the facts showing the severity of the offense
 - ii. Criminal history of the defendant
 1. The defendant's criminal history is given a score (in Roman numerals) ranging from one (I) to six (VI)...
 2. The final criminal history category (CHC) is arrived at through a point system for prior convictions and whether the instant offense of conviction was committed while the defendant was on probation, parole or supervised release, and whether it occurred close in time to the completion of a prior sentence.
 3. The lowest level (I) reflects that the defendant has either no criminal history or a minimal one, while the highest CHC (VI) indicates an extensive criminal history, including that for defendants classified as career offenders.
- c. The Federal Sentencing Table
 - i. Sets forth the ranges of imprisonment resulting from the intersection of the two critical sentencing factors:
 1. total offense level and
 2. CHC
 - ii. The table specifies a sentencing range (in months) which, under the advisory federal guidelines system currently in effect, is a recommendation within which the court may sentence a defendant

Instructor Notes: DEMONSTRATION: EX: a defendant convicted of a crime carrying a total offense level of 22 and a CHC of I, the guidelines recommend a sentence of 41-51 months. If, however, that same defendant had been assigned a CHC of VI based on an extensive criminal history, the guidelines would recommend a sentence of 84-105 months.

- d. United States v. Booker (04-104) 543 U.S. 220 (2005)
 - i. The guidelines violate the 6th Amendment
 - ii. Guidelines are now advisory
 1. Federal judge is still required to calculate the sentencing range recommended, but
 2. Is permitted to arrive at a reasonable sentence that satisfied the factors set forth by Congress in 18 USC 3553(a)
 - iii. Factor(s) warranting a sentence outside the recommended range
 1. may result in a departure or variance, either upward or downward

2. The district judge is required to clearly set forth on the record the rationale for any such reduction or variance
3. An appellate court reviews a challenged sentence for "unreasonableness."
- iv. The advisory guideline system has no effect on statutes requiring mandatory minimum sentences
- e. Post sentencing
 - i. The district judge signs the official record of the punishment that was imposed.
 - ii. That multi-page document is the Judgment in a Criminal Case, commonly known as the J&C

Instructor Notes: DEMONSTRATION: Review the (b)(6),(b)(7)(C) J&C provided to students in their course material.

BLOCK 6 BREAK POINT - summarize this block of instruction and ensure the following was covered:

- The objective for that block of instruction was met.
- Summarize the information
- Remediate by reviewing in greater detail or giving the student additional practice
- Preview of what is to come in the next block on instruction (sets expectations for future learning)

The next block of instruction will occur on Day 15 and will summarize the ERO prosecution LP as well as the entire CCS (TAMPICO prosecution).

GO TO CONCLUSION for BLOCK 7 STARTING POINT

Instructor Notes: **BLOCK 3 START POINT:** Day 6 – 1 hour

Bring the students back into the lesson by doing the following:

- Remotivate the students to why ERO Prosecutions is essential to their jobs
- Reorientation to ERO Prosecutions via Advanced Organizer
- Tell the students what to expect in this block of instruction and how it builds on the previous block
- Briefly review previous lesson's key topics
- Ask if anyone has any questions about the previous lesson

TO AID WITH MOTIVATOR, REORIENTATION VIA AO and TODAY'S AGENDA:

Begin by reviewing what students already know, i.e., that both administrative and criminal arrest can be made with or without a warrant. In both cases, forms must be completed to include a Charging Document and Warrant of Arrest. Officers are already familiar with the NTA (I-862), Warrant of Arrest (I-200) and other required administrative documents required to protect the rights of the alien and assist the Immigration Judge in making a decision.

Orient the students to this EPO (federal court documents) by using the above discussion. Just as with administrative hearings, the ERO officer must be familiar with the federal court documents required to properly start the prosecution of a defendant.

EPO #4 - Prepare various documents used in federal court.

In order to properly start the prosecution of a defendant, the ERO officer must be familiar with the necessary legal documents and who prepares them.

1. Documents Required to Formally Accuse a Defendant

- a. The government, defendant and court are advised of the offenses charged on the "charging documents".

Type of Offense	Court	"Minimum Charging Document
Capital	District	Indictment Only
Non-Capital Felony	District	Indictment, unless waived, and then by information
Misdemeanor	District	Information
Misdemeanor	Magistrate	Complaint

b. Charging Documents -

http://www.uscourts.gov/forms/forms_Criminal.cfm

i. Criminal Complaint (AO 91)

1. Establishes probable cause that a crime was committed and the defendant committed it
2. Signed by the officer, under oath, in front of the judge
3. Can be used to obtain an arrest warrant prior to arrest, or to state the charge when the officer makes a warrantless arrest

ii. Information

1. Looks similar to an indictment
2. Signed by the USA
3. Primarily used in misdemeanor cases

iii. Indictment

1. Formal charging document
2. Grand Jury decision that there is probable cause to believe a crime was committed and that the defendant committed the offense(s)

Instructor Notes: Focus above discussion on when to choose one option over another. EX: If the target alien is currently in state or local custody, and known to be in violation of federal law, one might obtain a Criminal Complaint and AW prior to the administrative encounter/arrest of an alien, or time permitting, an indictment. On the other hand, LEAR and NFOP units often administratively encounter and arrest aliens and later determine they are in violation of criminal law.

Discuss the advantages of obtaining an indictment prior to arrest (no PH), but that the ability to timely appear before the Grand Jury will depend on their district.

2. Warrants

a. AO 442 – Warrant for Arrest

- i. Orders the apprehension of and provides for the temporary detention of an individual
- ii. Obtain in conjunction with a criminal complaint, information, or indictment

b. AO-93 - Search Warrant

- iii. Authorizes the search for evidence of a crime, contraband, property used in committing a crime and/or a person to be arrested
- iv. Obtained in order to execute a criminal arrest warrant at a third party residence
- v. Obtained in order to execute an administrative warrant when unable to obtain consent
- vi. AO-106 – Application and Affidavit for Search Warrant

3. Affidavit (setting forth Probable Cause)

An affidavit is a written declaration made under oath, and it is used to obtain an arrest warrant, or to support an Application for a Search Warrant.

Six elements of an affidavit:

- a. **Bona Fides:** Generally, the first paragraph identifies the officer and sets forth his/her credentials by citing training, work experience, education, language abilities, etc.
- b. **Purpose/Criminal Violation(s):** Specifies what the affidavit is being offered in support of (a criminal complaint and/or search warrant), as well as the violation of law (verbatim) that the defendant/target is believed to have violated. Also, affirm that the evidence provided is based upon facts known to the affiant through personal observation as well as information provided by others.
- c. **Parameter Statement:** Some AUSAs will want you to clearly set forth that the entire case is not being presented at this initial stage and that only the facts necessary to a determination of probable cause have been included in the affidavit.

- d. **Probable Cause Statement:** Chronological narrative of pertinent facts that have been deemed necessary to meet that standard.
- e. **Summary of Violations:** The last paragraph reiterates the charge(s) that the defendant/target is believed to have violated and/or includes a request that the specific warrant be issued.
- f. **ATTACHMENT: Description of the Premises to be Searched and the Items to be Seized:** The Fourth Amendment requires that search warrants "particularly describ[e] the place to be searched, and the persons or things to be seized." That provision is often referred to as "the particularity requirement." A warrant satisfies that requirement if the description is set forth in such a manner that the officer with the search warrant can, with a reasonable effort, ascertain and identify the intended location.

Instructor Notes: Refer students to their thumb drive. Examples of the above documents have been provided, to include affidavits which were reviewed during EPO #1. While discussing the 6 elements of an affidavit, have the students review the example documents.

Instructor Notes: BLOCK 3 BREAK POINT - summarize this block of instruction and ensure that the following has been covered:

- The objective for that block of instruction was met
- Summarize the information
- Remediate by reviewing in greater detail or giving the student additional practice
- Preview of what is to come in the next block of instruction (sets expectations for future learning)

CCS Phase #8: FOT's will now meet with their respective CCS-C to practice EPO #4. See CCS Guide Phase #8 for further instruction. Students will prepare the federal court documents necessary to charge (b)(6),(b)(7) and to obtain an AW and SW.

SPECIAL NOTE: Day 10 - CCS PHASE #10: Advise students that on Day 10, prior to further lecture, they will break into their groups to meet with their respective CCS-C. See CCS Guide for further instruction on Phase #10 Presentation of court documents (prepared in Phase 8) to the USMJ for signature. The next block of instruction (**BLOCK 4**) will occur AFTER.

GO BACK TO EPO #2, Topic 3, for BLOCK 4 STARTING POINT.

II. Demonstration

- EPO #1: The instructor will refer the students to their thumb drive which contains actual court documents in cases in which the offenses discussed during EPO #1 were investigated and/or charged.
- EPO #2: The instructor will discuss real cases and experience as they relate to coordination with the USAO, USMJ, USMS and USPO. The CCS case (b)(6),(b)(7)(C) will also be used as an example of how to coordinate with these entities.
- EPO #3: The instructor will discuss the importance of immediately providing the USMS with an I-247 and ways in which the defense may use the Preliminary Hearing as a way to obtain discovery. Review the CCS (b)(6),(b)(7)(C) Indictment, Plea Agreement and J&C. Include Sentencing Guidelines demonstration by SME. Review the CCS (b)(6),(b)(7)(C) case file folder to point towards "discoverable" materials. Finally discuss the Muhammad and/or Stevens trial(s) as they relate to discovery and Brady/Giglio issues.
- EOP #4: The instructor will refer the students to their thumb drive which contains actual court documents discussed.

See instructor notes for further information on the demonstration portion of this lesson.

III. Student Practice

Refer to the FOTP-P CCS Guide, Phase 3, 8, 10 and 18, for further explanation of the student practice.

- Phase #3 – Present Case to AUSA
- Phase #8 – Prepare Application for Search Warrant, Search Warrant, Criminal Complaint, Arrest Warrant, and attached documents (description of premises to be search and description of items to be searched for)
- Phase #10 – Present court documents to USMJ for signature
- Phase #18 – Testify at Preliminary/Detention Hearing

IV. Feedback and Remediation

Refer to the FOTP-P CCS Guide, Phase 3, 8, 10 and 18, for further explanation of feedback and remediation.

- Phase #3 – See instructor script and checklist located at O:\ERO Lesson Plans\FOTP-P\4 - CCS Instructor (b)(6),(b)(7)(C) materials\CCS Phase 3

- Phase #8 – See instructor (b)(6),
(b)(7)(C) located at O:\ERO Lesson Plans\FOTP-P\d - CCS Instructor (b)(6),(b) materials\CCS Phase 8
- Phase #10 – See instructor checklist located at: O:\ERO Lesson Plans\FOTP-P\d - CCS Instructor (b)(6),(C) materials\CCS Phase 10
- Phase #18 – See instructor script and checklist located at: O:\ERO Lesson Plans\FOTP-P\d - CCS Instructor (b)(6),(C) materials\CCS Phase 18

CONCLUSION

Instructor Notes: BLOCK 7 START POINT: Day 15 – 2 hours

The CONCLUSION will bring the students back into the lesson by doing the following:

- Summarizing main ideas
- Integrating the lesson with the FOTP-P CCS (b)(6),(b)(7) as well as cases to be prosecuted in the field
- Re-state the objectives and ask what they learned in the previous lesson
- Re-motivate.

THIS TIME CAN BE USED TO REMEDIATE ANYONE WHO HAD NOT PASSED THE P.E.

I. Summary of Main Ideas

With the advent of VCAS and JCART teams and the expanding role of FOT's, ERO officers are now, more so than ever, involved in the federal criminal prosecution of their target aliens. You should now have a better understanding of the procedures that must be followed to include the following: gathering facts and assessing them for possible criminal violation(s); presenting the case for prosecution; providing continual documentation as the case develops including all necessary reports; coordinating with essential entities in the federal criminal justice system; and, following the Federal Rules of Criminal Procedures to a successful resolution of the case.

II. Integration

You have now learned the entire criminal prosecution from taking a lead on a criminal alien to the federal sentencing of that alien and disposition of evidence. You have completed the criminal prosecution of (b)(6),(b)(7)(C).

You now have a completed prosecution case file folder along with a multitude of example court documents, ROI's, and other reports which will assist you with your field operations.

III. Objective(s)

Ask students if all of the objectives for the class were met. Ask the students to recall 2 or 3 key components of the course. Takeaways include:

- EPO #1: What are some common elements that you will need to be able to prove in a 1253(a), 1253(b), 911 and/or 1325(a) case?
- EPO #2: What do you always want to have with you when bringing a new arrest to the USMS?

- EPO #3: What is the purpose of a detention hearing?
- EPO #4: What documents are required to obtain a federal search warrant?

IV. Motivation

Being a member of one of ERO's FOTs inevitably means you will be involved in the federal criminal prosecution of target aliens. You have a responsibility to follow the Federal Rules of Criminal Procedures (FRCrM), and to respect all of the rights that are owed to a person according to the law. By following the procedures detailed in the FRCrM, you will decrease your chances of being the target of any civil or criminal action, and increase the chance of having a successful prosecution.

V. Test of Final Activity

Refer to the FOTP-P CCS Guide, Phase 22, for further explanation of the final test of activity as well as the assessment.

- Phase #22 – Grand Jury testimony (Day 13, 1 hour).
- See instructor checklist located at O:\ERO Lesson Plans\FOTP-P\d - CCS Instructor (b)(6), (b) materials\CCS Phase 22
- See P.E. Skills Assessment checklist located at O:\ERO Lesson Plans\FOTP-P\g - P.E. Assessment Checklist

- Phase 14 – (b)(6),(b)(7) FD-249
- Phase 17 – SIR template
- Phase 18 and 22 – Officer Testimony Notes
- Phase 19 – I-44 Narrative
- Phase 20 – DRAFT FDL request
- Phase 20 – FDL Report
- Phase 20 – DRAFT ICE Letter to CIS
- Phase 20 – (b)(6),(b)(7) CIS Certificate of Non-Existence
- Phase 22 – (C) Indictment
- Phase 24 – DRAFT Return of Evidence Memos
- Phase 25 – (b)(6),(b)(7) Plea Agreement and J&C
- Phase 26 – Prosecution Case File Folder handout
- Phase 26 – ICE-73-004
- Final P.E. Day 14 – DRAFT (b)(6),(b)(7) OPS Plan and RPD notes
- Final P.E. Day 14 – DAVIS Federal court documents (SW, Application for SW, AW, Attachments A, B and Affidavit)
- Final P.E. Day 14 – (b)(6),(b)(7) FOW, aerial photo, maps and Use of Force continuum
- Final P.E. Day 15 – Evidence Kit

B. For Instructor Use (Located on ERO share drive, in CCS-C Workbook or in MCR)

- Phase 2 – (b)(6),(b)(7) I-138
- Phase 3 – (b)(7) Script and Checklist
- Phase 4 – (C) for Case Opening
- Phase 5 – 6 – (b)(6),(b)(7) for ROI #1 and #2
- Phase 7 – (b)(6),(b)(7) ROI #3 to be used as Report Writing assessment
- Phase 8 – Document Assembly and (b)(6),(b)(7) Court forms (Affidavit, AW, SW, etc) **[to be set up exactly as placed in CCS-C workbook]**
- Phase 9 – (b)(6),(b)(7) ICEEOPLAN
- Phase 10 – Lab assessment checklist for PRESENTATION to USMJ
- Phase 10 – Role Player Instruction / Script
- Phase 10 – Document pack (b)(6),(b)(7) for Phase 13 [signed and stamp]
- Phase 11 – (b)(6),(b)(7)(C) and lab assessment checklist
- Phase 12 – Lab assessment checklist for ICEEOPLAN briefing
- Phase 12 – Optional Questions for operational briefing
- Phase 13 – (b)(6),(b)(7) for Scratch I-213
- Phase 13 – (b)(7)(C) for USM-312
- Phase 13 / 14 – Phase 13/14 Lab and FINAL P.E. Checklist
- Phase 14 – (b)(6),(b)(7) 6051S, Evidence Bag, Room ID forms, Photo Log, Sketch
- Phase 15 – 16 – (b)(6),(b)(7) for ROI #4 and Incident Report
- Phase 17 – CCS Team Skills Assessment Checklist
- Phase 17 – (b)(6),(b)(7)(C) SIR and SIR checklist
- Phase 18 – Lab assessment checklist for PH and DH testimony
- Phase 18 – Role Player Instruction / Script
- Phase 19 – (b)(6),(b)(7) EABM entry for (b)(6),(b)(7) event
- Phase 19 – (b)(6),(b)(7) I-44
- Phase 20 – (C) FDL request form and 6051S
- Phase 20 – (b)(6),(b)(7) request letter to CIS
- Phase 21 – Instructor (b)(6),(b)(7) for ROI #5



U.S. Immigration
and Customs
Enforcement

ERO Prosecutions

Enforcement and Removal Operations Training Division
Charleston, SC

ICE

ERO

Prosecutions

What's in it for me?

- ERO has expanded its program to include LEAR units, VCAS, CAP units, JCART and NFOP units.
- As a result, ERO officers encounter aliens who have committed federal offenses.
- While some offices have a VCAS unit responsible for presenting cases for prosecution, others do not.
- Officers from any ERO unit may be assigned the responsibility for the prosecution of a case.



U.S. Immigration
and Customs
Enforcement

ICE

ERO
Prosecutions

**The successful prosecution
of an alien may depend on
any one of you!**



This lesson will help you recognize violations of federal law, properly charge an alien in federal court and successfully complete the prosecution.

ICE.2014-FOIA-01578.003187



U.S. Immigration
and Customs
Enforcement

Terminal Performance Objective

Condition: Given a field situation in which the elements of a federal crime exist,

Behavior: the ERO officer will recognize that a crime has been committed, determine if the case should be presented for federal prosecution and follow the steps required for the successful completion of that prosecution,

Criterion: in accordance with federal statutes and the Federal Rules of Criminal Procedure (FRCrimP).



Enabling Performance Objectives

- Recognize when an alien is in violation of federal criminal law.
- Coordinate with the USAO and the U.S. District Court, as well as other agencies involved in the prosecution process.
- Follow federal court procedures (based on the FRCrmP).
- Prepare various documents used in federal court.



Advance Organizer of Main Ideas

You already are accomplishing these objectives from the administrative perspective:

- you recognize when an INA violation occurs;
- you decide to place an alien in removal proceedings;
- you coordinate with DHS and outside entities, e.g., trial attorneys, EOIR and foreign consulates;
- you follow procedures, including serving forms, detaining or releasing, and providing notification as case progresses; and,
- you meet deadlines, e.g., appearance before the IJ, serving of forms, length of detention post-order.



ICE

ERO

Prosecutions

AGENDA

TODAY

- Student handout and examples located on thumb drive
 - BLOCK 1 / Day 1: EPO#1 – Review and discuss U.S. Code provisions that aliens violate
 - Review affidavits and indictments that correspond with the federal violations
- **SUGGESTION: Tag your Law Books!!**

OVER THE NEXT 3 WEEKS

- BLOCKS 2 - 7
- Review of example court documents as well as real ERO Cases
- CCS phases to practice EPOs
- P.E. (Grand Jury testimony)



U.S. Immigration
and Customs
Enforcement

ICE

ERO

Prosecutions

8 USC 1253(a)(1)

Final order of removal outstanding against any alien who is a member of any of the classes described in 8 USC 1227(a) [INA 237(a)]

- ♦ Willful failure/refusal to depart within 90 days of final order,
- ♦ Willful failure/refusal to make timely application in good faith for travel/other documents necessary to departure,
- ♦ Connives, conspires, or takes other action to prevent or hamper the alien's departure, or
- ♦ Willful failure/refusal to present for removal at required time and place.



U.S. Immigration
and Customs
Enforcement

8 USC 1253(b)

An alien who.....

- Willfully fails to comply with regulations or requirements issued pursuant to 8 USC 1231(a)(3) [INA 241(a)(3)] (Order of Supervision)

or

- Knowingly gives false information in response to an inquiry under that same section.



ICE

ERO

Prosecutions

8 USC 1326(a)

- Alien denied admission, excluded, deported, or removed, or has departed the U.S. while an order of exclusion, deportation, or removal is outstanding, and thereafter
- enters, attempts to enter, or is at any time found in, the U.S., unless
 - ♦ The AG has expressly consented to the alien's reapplying for admission; or
 - ♦ The alien, previously denied admission and removed, was not required to obtain such advance consent.



U.S. Immigration
and Customs
Enforcement

- Phase 22 – CCS Team Skills Assessment Checklist
- Phase 22 – Instructor GJ testimony Checklist
- Phase 23 – [REDACTED] for ROI #6
- Phase 24 – [REDACTED] for Final 6051S
- Phase 24 – [REDACTED] for Return of Evidence Memo (1-3)
- Phase 25 – [REDACTED] Team Skills Assessment Checklist
- Phase 25 – (b)(6), [REDACTED] for [REDACTED] CM case closing
- Phase 25 – (b)(7) [REDACTED] for (b)(7) CM statistics
- Phase 25 – (C) [REDACTED] for (E) CM ROI #7
- Phase 26 – [REDACTED] Team Skills Assessment Checklist
- Phase 26 – [REDACTED] Prosecution file folder (located in MCR)
- Phase 26 – [REDACTED] ICE Form 73-004
- Final P.E. Day 14 –
 - Final P.E. Team Checklist
 - (b)(6),(b)(7)(C) OPS Plan
 - Checklist for ICEEOPLAN briefing
- Final P.E. Day 15
 - Final P.E. Team Checklist
 - Phase 13/14 and Final P.E. Checklist
 - (b)(6),(b)(7)(C) 6051S (multiple) and Evidence Bags
 - (b)(6), (b)(7) executed (b)(6),(C) Warrant
 - (C) sketch

VIII. References

See individual LPs for list of references

ICE

ERO

Prosecutions

8 USC 1326(b)

- 1326(b)(1) – Alien's removal was after three or more prior misdemeanor convictions involving drugs, crimes against the person, or both, or a non-aggravated felony conviction
- 1326(b)(2) – Prior removal was after a conviction for an aggravated felony
- 1326(b)(3) – Prior exclusion as terrorist
- 1326(b)(4) – Prior removal in lieu of serving sentence for non-violent offense



U.S. Immigration
and Customs
Enforcement

ICE

ERO

Prosecutions

RDF

Hello RDF-

The subject related to this A-file will be facing criminal charges. I need the entire physical file to go before a Grand Jury and obtain an indictment on felony charges. **The United States Attorney's Office requires that we have the original physical file, as it will be used as evidence in the criminal case. We can NOT substitute copies as evidence.**

Please release the file under Interim Guidance issued by NSRV.



U.S. Immigration
and Customs
Enforcement

ICE

ERO

Prosecutions

18 USC 922(g)(5)

- Alien illegally or unlawfully in U.S., or
- Admitted under a non-immigrant visa; who
- Ships or transports in interstate or foreign commerce, or possesses in or affecting commerce, any firearm or ammunition; or
- Receives any firearm or ammunition which has been shipped or transported in interstate or foreign commerce.



U.S. Immigration
and Customs
Enforcement

18 USC 911

False Claim to USC

- Whoever [an alien]
- Falsely and willfully represents himself to be a citizen of the United States.



ICE

ERO

Prosecutions

8 USC 1325(a)

- An alien who enters or attempts to enter the U.S. at any time or place other than as designated by immigration officers, or
- An alien who eludes examination or inspection by immigration officers, or
- An alien who attempts to enter or obtains entry to the U.S. by a willfully false or misleading representation or the willful concealment of a material fact.



U.S. Immigration
and Customs
Enforcement

ICE

ERO

Prosecutions

18 USC 1028(a)

Whoever, in a circumstance described in subsection (c) -

- (1) knowingly and without lawful authority produces an identification document, . . . or a false ID document;
- (6) knowingly possesses an identification document . . . that is or appears to be an ID document . . . of the United States . . . which is stolen or produced w/o lawful authority knowing that such document . . . was stolen or produced w/o such authority;
- (7) knowingly transfers, possesses or uses, w/o lawful authority, a means of identification of another person with the intent to commit, . . . any unlawful activity violating Federal law, . . . ;



U.S. Immigration
and Customs
Enforcement

ICE

ERO

Prosecutions

18 USC 1028(a)

Subsection (c): The circumstance referred to in subsection (a) of this section is that -

- (1) the identification document, . . . or false ID document is or appears to be issued by or under the authority of the U.S. . . . ; [or]
- (3) either –
 - (A) the production, transfer, possession or use prohibited by this section is in or affects interstate . . . commerce, including transfer of a document by electronic means; [or]
 - (B) the means of identification, identification document, false ID document . . . is transported in the mail in the course of the production, transfer, possession or use prohibited by this section.



U.S. Immigration
and Customs
Enforcement

ICE

ERO

Prosecutions

8 USC 1028(A)(a)(1)

- Whoever, during and in relation to any felony violation enumerated in subsection (c)
 - ♦ 42 USC 408
 - ♦ 18 USC 1546
 - ♦ 18 USC 1015e **or 911
 - ♦ 18 USC 1028(a) [except 1028(a)(7)]
- Knowingly transfers, possesses, or uses, without lawful authority, a means of identification of another person
- 2-year term in addition to that for the felony
- Flores-Figueroa [2009] requires government to prove the defendant knew the identity was real



U.S. Immigration
and Customs
Enforcement

ICE

ERO

Prosecutions

18 USC 111(a)

- (a) Whoever
 - Forcibly assaults, resists, opposes, impedes, intimidates, or interferes with any person designated in 18 USC 1114 while engaged in or on account of the performance of official duties;
- 18 USC 1114 includes “any officer or employee of the United States or of any agency in any branch of the United States Government . . . while such officer or employee is engaged in or on account of the performance of official duties.”



U.S. Immigration
and Customs
Enforcement

ICE

ERO

Prosecutions

18 USC 1001(a)

- (a) Except as otherwise provided in this section, whoever, in any matter within the jurisdiction of the executive . . . Branch of the Government of the United States, knowingly and willfully -
 - (1) falsifies, conceals, or covers up by any trick, scheme, or device a material fact;
 - (2) makes any materially false, fictitious or fraudulent statement or representation; or
 - (3) makes or uses any false writing or document knowing the same to contain any materially false, fictitious, or fraudulent statement or entry.



U.S. Immigration
and Customs
Enforcement



DEPARTMENT OF THE TREASURY
United States Customs Service

CUSTOMS FUGITIVE REPORT

Directive 4220-003A

1 Date of Report (If date exceeds warrant date by 24 hours, enter reason for delay in RE MARKS #32)

2 Originating Office ☐ HIDTA

3 Case Number ☐ OCDETF

4 ☐ Outstanding Arrest Warrant or Escape ☐ Armed and Dangerous ☐ Suicidal Tendencies ☐ Supplemental ☐ Cancel/Clear

7 Birthplace

11 Eye Color

13 Skin Tone

14 FBI Number

15 FPC

16 Scars/Marks/Tattoos

17 Operator License Number (OLN)

License State (OLS)

Year Expires (OLY)

18 Vehicle Information

19 Date of Warrant

20 Warrant Type

21 Bond

22 Fugitive

23 Reason for Fugitive Status

24 Social Security Number

25 Citizenship

26 Alien Registration Number

27 Passport Number

28 State Agency NBR (SID)

29 Last Known Address/Other Miscellaneous Numbers

32 Remarks (include vehicle/family member data - Note See instructions for entry requirements)

30 Aliases

33. Clearance Information (Fugitive apprehended)

Date

Place

Agency

Agency Case Number

31 Photo (If available attach here)

34. Cancellation Information (Case Dismissal, Indictment Dismissed, Etc.)

Explanation

Date

35 (b)(7)(E)

36 NIC

37 OCA

38 PRIMARY APPREHENSION RESPONSIBILITY

39 Reporting Agent

Telephone #

Pager #

☐ U.S. Customs Service

☐ U.S. Marshals Service

40 Approving SAIC/RAIC

Printed Name

Printed Name

Signature

Distribution Original

Copy 1

Date

Signature

Copy 2

Date

Copy 3

Previous Editions are Obsolete

Customs Form 59 (09/01)

Customs Fugitive Report INSTRUCTIONS

Red fields are Mandatory

Block 1 - Date of Report

Enter date of report. If date is more than 24 hours from the Date of Warrant, explain in Block 32.

**Block 2 & 3 - Originating Office
Case Number**

Enter SAIC RAC office and case number. Check box (b)(7)(F) or (b)(7)(G) investigation.

Block 4 - Check Boxes

Check all that applies to Fugitive. In Block #32 explain why the Armed Dangerous and/or Suicidal Tendencies block(s) were checked. Use additional pages if necessary.

Block 5 - Sex

Enter (M) for Male, (F) for Female, (O) for Other.

Block 6 - Race

Enter (W) for White, (B) for Black, (O) for Other.

Block 7 - Birthplace

City or town, State and Country of birth.

Block 8 -

Enter (D) for Domestic, (F) for Foreign, (O) for Other.
If (D) or (F) enter date of birth (MM/DD/YYYY) and date of report (MM/DD/YYYY).
If (O) enter date of birth (MM/DD/YYYY) and date of report (MM/DD/YYYY).

Block 9 - Height

In feet and inches. Minimum is 4' to a max of 7'11".

Block 10 - Weight

Enter weight in pounds. Minimum is 100 to a max of 300.

Block 11 - Eye Color

Brown, Blue, Green, etc.

Block 12 - Hair Color

Black, Brown, etc.

Block 13 - Skin Tone

Light, Medium, or Dark

Block 14 - FBI Number

If known

Block 15 - FPO

Fingerprint Classification if known

Block 16 - Scars, Marks, Tattoos

Self-explanatory

Block 17 - Operator License Number

Drivers License number

License State

State where license was issued

Year Expires

Year license expires

Block 18 - Motor Vehicle

Self-explanatory

Block 19 - Vehicle

Self-explanatory

Block 20 - Warrant Type

Arrest

Block 21 - Bond

Amount in dollars, if known

Block 22 -

Enter (D) for Domestic, (F) for Foreign, (O) for Other.

Block 23 - Social Security Number

Enter Social Security Number

Block 24 - Social Security Number

Self-explanatory. If more, use Block 29.

Block 25 - Citizenship

If known, country where citizen, not necessarily birth country.

Block 26 - Alien Registration Number

Self-explanatory, if known

Block 27 - Passport Number

Self-explanatory, if more, use Block 29. Other Miscellaneous Numbers

Block 28 - State Agency (NBR/SH)

If known, this is ID number of a State criminal history record. Include state.

Block 29 - Last Known Address

Last known address. Other identification cards, identifications, or numbers of subject. Additional dates of birth. Other Social Security numbers. List numbers of cell phones, pagers, associate phone numbers used by fugitive or family.

Other Miscellaneous Numbers

Block 30 - Aliases

Other names and aliases of subject

Block 31 - Photo

Attach photo to CF-59, if applicable

Block 32 - Remarks

Include here: Any additional data. Reason report date is 24 hours older than Warrant date, i.e. "Sealed Indictment." **When entering License Plate and/or Vehicle data, two (2) higher standards MUST be met, 1-Location of vehicle and/or license plate MUST be unknown, AND 2- you have reasonable grounds to believe the subject is operating the vehicle or a vehicle with the license plate. Note: Mere knowledge or verification through a DMV that a vehicle and/or license plate is registered to the subject does not meet the criteria for entry!**

Block 33 - Clearance Information

Use this block ONLY if the subject has been apprehended. Blocks are self-explanatory.

Block 34 - Cancellation Information

Use this block to explain any reason why the warrant is no longer valid.

Block 35 - (b)(7)(F)

(b)(7) Record Identification number

Block 36 - NID

NID number, if known, used for removing an NCIC record

Block 37 - OCA

OCA is a Sector assigned number

Block 38 - Primary Apprehension Responsibility

Check one box to signify the agency who has primary apprehension responsibility.

Block 39 - Reporting Agent

Case Agent print's name, signs and dates. Include telephone and pager numbers.

Block 40 - Approving SAIC RAC

Approving Official SAIC RAC print's name, signs and dates.

Customs Form 59 (Back) (09-01)

**REQUIREMENTS FOR RECORD ENTRY INTO NCIC
WANTED PERSONS (WPF) AND DEPORTED FELONS (DFE)**

WANTED PERSONS Section A: WPF Identity	DEPORTED FELONS Section B: DFE Identity
Name _____ A# _____ DOB# _____ SSN# _____ I.D.# _____ I.D.# _____	Name _____ A# _____ DOB# _____ SSN# _____ I.D.# _____ I.D.# _____
A-File Requirements (WPF Records) CIS updated _____ Totals _____ _____ DDCS / ARM updated _____ Totals _____ _____	A-File Requirements (DFE Records) CIS updated _____ Totals _____ _____ DDCS / ARM updated _____ Totals _____ _____
A-Files with Administrative ICE Warrants Admin Order _____ 2. AS issued Standard Formed _____ ICE warrant(s) _____ 2. AS issued ICE Administrative _____ One of the following _____ 2. AS issued _____ 2. AS issued _____ 2. AS issued _____ Other Document _____	A-Files with Administrative ICE Warrants Signoff received _____ Admin Order _____ ASU Form 101 (for more complete copy of Court order) Attached _____ Fully executed ICE Administrative _____ One of the following _____ 2. AS issued _____ 2. AS issued _____ 2. AS issued _____ Other Document _____
	If Subject IS NOT an AggFel, briefly state circumstances that warrant entry into NCIC _____ _____ _____

Submitting Field Office _____
 Supervisor Signature & Date _____

Completed Form and related A-Files should be forwarded to
Law Enforcement Support Center (LESC)
Warrant Validation Unit
188 Harvest Lane
Williston, VT 05495

Voice: (802) 872-(b)(6), --- Fax: (802) 872-6047



U.S. Immigration and Customs Enforcement

Criminal Alien Program/Fugitive Operations (CAP/FUGOPS)

QUICK REFERENCE PROCESSING GUIDE

Version 3



U.S. Immigration
and Customs
Enforcement

QUICK REFERENCE GUIDE
CAP/FUGOPS Specific

This Quick Reference Guide is designed for the processing of subjects encountered through the Criminal Alien Division utilizing the JCART, VCAS, CAP, FUGOPS and LEAR programs.

Information contained herein is Law Enforcement Sensitive. Do not share this document in any form with anyone who does not have a need to know.



U.S. Immigration and Customs Enforcement

QUICK REFERENCE GUIDE *CAP/FUGOPS Specific*

Initial Processing

All processing of CAP/FUGOPS subjects will begin at the initial event screen to ensure proper event creation. This quick reference is designed to guide all officers involved with CAP/FUGOPS in the correct procedures for processing of aliens. There are no other acceptable methods to process. Full processing should be completed after the subject's identity, arrest and criminal history have been verified through (b)(7)(E)

1. Log into ENFORCE using PICS ID and password.
2. When the green screen appears choose the "office that you are currently assigned to" by selecting the appropriate site code and office code from the drop down list (Example, SND/T– DRO San Diego)

** NOTE: It is important to log onto the correct site. Statistical reports and tracking records will be made from (b)(7)(E) based on the logon information.*



(b)(7)(E)

ALL PROCESSING WILL BEGIN AT THE INITIAL EVENT SCREEN

1. From the “Enforce” drop down menu, choose “Initial Event”. (**DO NOT** begin by selecting VR, Full VR, or NTA)

NOTE: All subjects arrested/encountered together must be processed under the same event as directed by the National Incident Based Reporting System. There can be a single event with multiple subjects.



(b)(7)(E)

2. **“Lead type”** field- This field is to indicate the program that initially encountered the subject(s) of the event created in ENFORCE.
 1. **CLC** (CAP LOCAL entity)
 2. **CST** (CAP STATE entity)
 3. **CFD** (CAP FEDERAL entity)
 4. **JCT** (Joint Criminal Alien Response Taskforce)
 5. **VCS** (Violent Criminal Alien Section)
 6. **FOL** (Fugitive Operations)
3. **“Lead box”**- this box is to be unchecked unless the event created is meant to be an investigation.
4. **“Event occurred on”**– Enter the date and time of the encounter/event.



(b)(7)(E)

5. “Event type” –

- **CAP** - to include all criminal alien program contingents(CAP, LEAR, VCAS, JCART).
- **FOE** – Fugitive Operations.



U.S. Immigration and Customs Enforcement

QUICK REFERENCE GUIDE *CAP/FUGOPS Specific*

6. **“Program”**- The program code is to reflect the program issuing a document through the event whether in the future or present.
 - ***CAP (DRO Criminal Alien Program)***
 - ***JCT (JCART)***
 - ***VCS (VCAS)***
 - ***LEA (LEAR)***
 - ***FUG (Fugitive Operations)***
7. **ORI** field should populate automatically. This might have to be changed to your agency **ORI**, depending on your location.
8. **Lead Source:** When an event is initiated by a Immigration Alien Response (IAR) or interoperability, “SC” is to be placed in the Lead Source. The county for which the hit occurred is to be placed in the comment section

(b)(7)(E)



U.S. Immigration and Customs Enforcement

QUICK REFERENCE GUIDE *CAP/FUGOPS Specific*

9. “G-23 line number” field- Enter one of the following:

- 511.2.1 – for foreign nationals who have been arrested for or convicted for a narcotics trafficking offense.
- 511.2.2 – for foreign nationals who have been arrested for or convicted for criminal activity defined as an aggravated felon per Section 101(a)(43) of the Act.
- 511.2.3 for foreign nationals who have been arrested for or convicted of other removable offenses.
- 516.1 for administrative absconders.
- 518.1 for foreign nationals who have been arrested for or convicted of non-removable offenses.
- 518.3 – for foreign nationals that have been arrested for only being in the United States unlawfully.
- 520.3 – for all other CAP related encounters.
- 520.3.1 – for all other DEPORT center encounters.

(b)(7)(E)



U.S. Immigration and Customs Enforcement

QUICK REFERENCE GUIDE *CAP/FUGOPS Specific*

10. “Operation” field- Operations are designated by DRO headquarters, select only the following when appropriate.

- DEPORT should now use “DEPORT CENTER” for all associated events.
- CAP SURGEs should utilize “CAP SURGE” for all associated events.
- “Arizona Operational Plan” for all AOP associated events
- “Operation Southern Resolve”
- “Secure Communities” for all Secure Communities initiated events.

*****Other operations will be tasked to DRO personnel *****

(b)(7)(E)

12. “**Landmark**”- Select the appropriate area for the initial encounter.

13. “**Place of Apprehension or Seizure**”- Type the arrest location.

14. “**Received by**”, “**Primary Agent**” and “**Event Supervisor**” should be the case agent, case agent and case supervisor, respectfully.



U.S. Immigration and Customs Enforcement

QUICK REFERENCE GUIDE *CAP/FUGOPS Specific*

- A. CLICK the **SAVE** button  (blue diskette along top button bar). Note the **EVENT** number assigned at the top of the screen for future reference.
- B. CLICK **"Add Subject"** button. Add Subject
- C. On the subject information screen:
- D. Input the first subject's control name, first name, middle name (optional), sex, primary citizenship, subject role, and date of birth.
- E. Select either interview or screening. The selection is to reflect the initial encounter.
 - 1) An interview is an one-on-one questioning
 - 2) A screening is the searching of biometric information in databases.

(b)(7)(E)

- F. Finish completing all appropriate fields.
- G. CLICK the save button (blue diskette along top button bar).
- H. If there are multiple subjects, you can now click the **"create new record"** button  (top button bar). This will give you a blank screen to input the next subject. You should see the first subject in the drop-down "subject" field near the top of the screen.
- I. REPEAT steps a, b, and c above until all subjects have been added to the event.



Detainers and Criminal Severity Levels

*** This steps below must be completed before completing a Detainer***

1. Identify the charge or conviction severity level for which the person listed on the detainer is being encountered.
 - NCIC level 1 – major drug offenses and violent offenses such as murder, manslaughter, rape, robbery, and kidnapping.
 - NCIC level 2 – minor drug offenses and mainly property offenses such as burglary, larceny, fraud, and money laundering.
 - NCIC level 3 – all other offenses.
 - a. CLICK the “**ALERT**” button . **Alert**
 - b. CLICK on the down arrow and select the appropriate severity level as listed above
 - c. 1, 2 or 3
 - d. In comments enter the charge/conviction
 - e. CLICK “**OK**” after entering the charge/conviction
 - f. Press the BLUE DISK 
2. Press the “**Detainer**” button **Detainer**
 - a. Find the appropriate detention facility using the dropdown arrow.
*Note: if the facility or Agency is not listed use OTH and manually input the facility, then immediately forward the facility Name, Address and type to HQ CAP.
 - b. INPUT a probable release date.
 - c. PRESS the BLUE DISK 



(b)(7)(E)

Arrests and Severity Levels

As noted, all arrests should have an appropriate Arrest Landmark associated that represents the means of the arrest. As outlined in the (b)(7)(E) EARM Landmark tasking dated October 30, 2008, all Field Office Directors are to ensure, through their (b)(7)(E) Data Systems Administrators (DSA), the creation of Arrest Landmarks within (b)(7)(E) for their area of responsibility (AOR). These landmarks are to be utilized by all DRO and 287(g) personnel when making an arrest and issuance of a charging document. The following steps should be completed in (b)(7)(E) when the arrest and issuance of a charging document against an alien is warranted.

After initial processing through full client and at the time the subject is to be placed in ICE custody users will continue processing the Arrest from the **ARREST BUTTON**:

Arrest



**U.S. Immigration
and Customs
Enforcement**

QUICK REFERENCE GUIDE
CAP/FUGOPS Specific

(b)(7)(E)

A. Enter the date of the arrest; this will also be the date of issuance.

B. Choose the method of arrest

1. CAP

- i. **CLC** (CAP Local)
 - ii. **CST** (CAP State)
 - iii. **CFD** (CAP Federal)
 - iv. **NCA** (Non Custodial Arrest - to be used for all street arrests with an appropriate landmark)
2. **JCART** = **NCA** (Non Custodial Arrest - to be used for all street arrests with an appropriate landmark)
3. **VCAS** = **NCA** (Non Custodial Arrest - to be used for all street arrests with an appropriate landmark)
4. **LEAR** = **LEA** (with an appropriate landmark)

5. FUGOPS

- i. **L** (Located –to be used for fugitives arrested by Fugitive Operations with an appropriate landmark)
6. **NCA** (Non Custodial Arrest - to be used for all street arrests with an appropriate landmark)



U.S. Immigration and Customs Enforcement

QUICK REFERENCE GUIDE *CAP/FUGOPS Specific*

Appropriate landmarks will contain a minimum as follows for the corresponding programs:

CAP:

Name of Jail

“CAP Street Arrest” = a CAP arrest without coordination with an LEA and the subject is not incarcerated

Name of LEA

JCART:

NAME of LEA

“JCART Street Arrest” an arrest without coordination with an LEA and the subject is not incarcerated.

VCAS:

Name of LEA

“VCAS Street Arrest” an arrest without coordination with an LEA and the subject is not incarcerated.

LEAR:

LEAR/Name of LEA

“LEAR Street Arrest” an arrest without coordination with an LEA and the subject is not incarcerated.

FUGOPS:

“Fugitive Operations”



U.S. Immigration and Customs Enforcement

QUICK REFERENCE GUIDE *CAP/FUGOPS Specific*

- A. Press Tab and enter the immigration status
- B. Press Tab until the Site is selected (Ensure that “T” is selected)
- C. Press the down arrow and select the appropriate landmark.
- D. TAB to the “**NON INS LAWS- OFFENSE**” **Non INS**
Offense

1. Officers are to determine the level of severity of the charge/conviction that led to the encounter, issuance of the charging document and arrest.

- 1-NCIC Level 1 – major drug offenses and violent offenses such as murder, manslaughter, rape, robbery, and kidnapping.
- 2-NCIC Level 2 – minor drug offenses and mainly property offenses such as burglary, larceny, fraud, and money laundering.
- 5-NCIC Level 3 – all other offenses.
- N-None
- 4-Traffic DUI – Select if encountered specifically due to a DUI Charge.
- 3-Traffic – Select if encountered specifically for a traffic citation.

(b)(7)(E)



U.S. Immigration and Customs Enforcement

QUICK REFERENCE GUIDE *CAP/FUGOPS Specific*

E. Using the drop down arrow select the appropriate severity level above.

F. CLICK OK and then select ***“Degree”***

Laws
Degree
|

- A-Aggravated Felony
- F-Felony
- M-Misdemeanor
- N-None
- T-Traffic

G. Select the degree that corresponds with the severity level selected for the offense,

(b)(7)(E)

Click OK



Criminal Statistics:

CAP, VCAS, LEAR, JCART and FUGOPS officers are to ensure that all criminal statistics are inputted correctly in the (b)(7)(E) system. In order to satisfy the minimum standard that is necessary to comply with the memorandum titled "Criminal Alien Statistics" signed by DRO Director James T. Hayes Jr. on August 29, 2008, officers are to utilize the "criminal record" box to notate if the subject found removable is a convicted criminal or not.

1. Finish processing the subject
2. Press the Pinter Icon in the menu bar
3. Select the I-213
4. If the subject is a convicted criminal select the "criminal record" box. If the subject is not convicted of a crime DO NOT select the box.

(b)(7)(E)



Rapid Removal of Eligible Parolees Accepted for Transfer (REPAT):

ICE Rapid REPAT is another law enforcement tool available that assists in ensuring that all criminal aliens serving criminal sentences are identified and processed for removal prior to their release from state custody. The identification and processing of incarcerated criminal aliens prior to release reduces the burden on the taxpayer, and ensures that criminal aliens are promptly removed from the United States upon completion of their criminal sentence. This program allows ICE to more effectively achieve its objective of identifying and quickly removing criminal aliens from the United States. ICE Rapid REPAT also allows ICE and participating States to reduce the costs associated with bed space.

When an alien is encountered based on a RAPID REPAT release, officers will ensure that it is notated in the alert section of the edit subject screen.

(b)(7)(E)



U.S. Immigration and Customs Enforcement

QUICK REFERENCE GUIDE *CAP/FUGOPS Specific*

It is imperative that these procedures are followed for all CAP/JCART/VCAS/LEAR cases. This will insure that DRO maintains data integrity in the management. Data quality errors will be published monthly. These errors will be corrected within seven days of receipt and notification of the correction will be forwarded to the CAP HQ mailbox along with the manager that is to be contacted if errors are found to be pending.

Guide prepared by:

Headquarters, Immigration and Customs Enforcement
Criminal Alien Program
Operations

For questions, please contact:

Unit Chief: (b)(6), (b)(7)(C)
DD: (b)(6), (b)(7)(C)

**U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT
ENFORCEMENT AND REMOVAL OPERATIONS**

Use of Restraints

Policy Number: ERO 11155.1

Issue Date: 11/19/2012

Effective Date: 11/19/2012

Review/Expiration Date: 11/19/2016

Superseded: Memorandum on Use of Restraints, Victor X. Cerda,
Acting Director (July 20, 2004)

Federal Enterprise Architecture Number: 306-112-002b

- 1. Purpose/Background.** This Directive establishes guidelines for officers who arrest and detain persons pursuant to the authorities of U.S. Immigration and Customs Enforcement (ICE) Office of Enforcement and Removal Operations (ERO).
 - 1.1.** This Directive applies to all ICE ERO officers with arrest authority as authorized in the INA as amended and implemented in Title 8, Code of Federal Regulations.
 - 1.2.** This Directive applies from the time the arrestee is encountered until processed into an ICE approved detention facility or turned over to another law enforcement agency, and to subsequent detainee transfers or transports by ERO officers.
- 2. Policy.**
 - 2.1.** Upon arrest officers shall apply appropriate restraint devices which may include, but are not limited to, handcuffs, flexible restraints, or full restraints, in accordance with the procedures outlined in this directive.
 - 2.2.** Except in exigent circumstances, officers shall only use ICE authorized restraints on arrestees in a manner that is safe, secure, and professional and in a manner consistent with appropriate ICE-approved or provided training. Restraints will not be used to impose punishment on any individual arrested by ICE personnel.
 - 2.3.** Regardless of the level of restraints used, no arrestee will be transported without the assigned officer conducting his/her full search of the arrestees person for contraband, except when circumstances pose a safety hazard or danger to the officer, arrestee or the public. In the latter case, a full search will be conducted as soon as practicable. A pat down search shall be the minimum search conducted.
 - 2.4.** When transporting a restrained arrestee, officers shall take reasonable and prudent precautions to avoid causing unnecessary or physical discomfort. If possible, avoid exposing restrained persons to unnecessary public view. Once applied, the restraints must not restrict blood circulation or breathing.

Officers may not leave any handcuffed or otherwise restrained person unattended, except in exigent circumstances. Whenever foreseeable, supervisors should plan for additional officers and/or make alternate arrangements to prevent leaving restrained persons unattended. Officers may not secure any person to a fixed object that could endanger the person's life or cause injury.

Transport Hood and Protective Masks (spit guards/shields) are considered safety related equipment (not restraints) when properly used and applied.

Officers will not transport anyone without considering the person's risk to ICE staff, the public, himself/herself, and the likelihood of escape.

3. Definitions. The following definitions apply for purposes of this directive only:

- 3.1. Adult.** Any person believed to be 18 years of age or older.
- 3.2. Alien.** Any person who is not a United States citizen or national.
- 3.3. Arrestee.** Any person, regardless of citizenship or nationality, who has been arrested, restrained, transported, or detained by ERO officers
- 3.4. Child.** Any person believed to be under the age of 14 years of age.
- 3.5. Contraband.** Any item that is prohibited by ICE or by law.
- 3.6. Detainee.** Any alien booked into an ICE approved detention facility.
- 3.7. Escape Risk.** Any person who the officer believes may attempt to flee from ICE custody after arrest or in any form of detention, if s/he is not otherwise prevented.
- 3.8. Escort.** An officer's transport or movement of any person who has been arrested and/or detained under the authorities of ICE ERO.
- 3.9. Exigent Circumstances.** A situation requiring unusual or immediate action or aid and that may require ERO officers to circumvent usual procedures (e.g. to prevent imminent danger to life or safety of an officer, the alien or other detainee, or the public or serious damage to property, or to forestall the imminent escape of a person in custody, or destruction of evidence).
- 3.10. Full Restraints.** Full Restraints means: ICE-approved handcuffs, waist/belly chain, and leg irons.
- 3.11. Full Search.** A search, by an ERO officer, of an arrestee's body, clothing and/or other items (e.g., purse or wallet in the arrestee's possession) that is conducted

to locate and retrieve weapons, contraband, and/or means of escape or evidence of a crime.

- 3.12. Means of Escape.** Any tool, device, or contrivance designed or used for defeating a restraint (i.e., handcuff key, shim, etc.).
- 3.13. Officer.** Any officer or agent employed by ICE ERO as defined by 8 C.F.R. 287.5.
- 3.14. Restraining Device.** Any physically attached or applied device having the purpose of preventing, restricting, limiting, or controlling the movements of the person on whom it is applied. Safety equipment is not considered to be a restraining device.
- 3.15. Transport.** Use of a vehicle to move any person arrested or detained.
- 3.16. Weapon.** Any object, item, or device that may be used to cause physical injury, incapacitate, or diminish a person's capability, either temporarily or permanently.

4. Responsibilities.

4.1. Managers and Supervisors are responsible for:

- a) Disseminating and enforcing the Use of Restraints Directive;
- b) Verifying officers receive appropriate training before they carry out their duties;
- c) Providing officers with the appropriate type and number of restraining devices, including all necessary keys and tools; and
- d) Conveying all known information concerning escape risks, criminal background or involvement, and violence or medical indications to officers or managers.

4.2. Officers are responsible for:

- a) Complying with the Use of Restraint Directive;
- b) Verifying that approved restraints, keys, and tools are functioning properly and available for duties, as assigned;
- c) Reporting any non-functioning equipment to their supervisor; and
- d) Conveying all known information concerning escape risks, criminal background or involvement, and violence or medical indications to officers or managers.

5.0. Procedures.

- 5.1. Handcuffing.** When arrestees are encountered at locations deemed unsecure by arresting officers, officers should handcuff (double-locked) all arrestees with

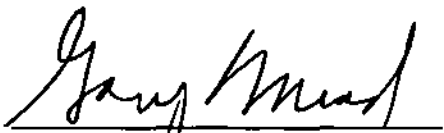
their hands behind their back and palms facing outward. Age, size, or gender is not a valid reason for failing to handcuff an arrestee.

- 5.2. Full Restraints.** When arrestees are encountered at a secure location (e.g. jail, prison, or similar location), officers will utilize full restraints.
- 5.3. Exceptions.** Officers may restrain an arrestee with his/her hands in front or use other appropriate and approved restraining device(s) when an arrestee:
 - a) is in an obvious state of pregnancy,
 - b) has a physical disability, or
 - c) has injuries that could be aggravated by standard handcuffing procedures.
- 5.4. Encountering a Child.** Any child deemed not to pose a threat of harm or escape by an officer will not be restrained.
- 5.5. Large or Inflexible Persons.** Any individual who is larger or lacking flexibility may require the use of several sets of handcuffs linked together, flex-cuffs, or other specifically designed flexible restraints, if necessary.
- 5.6. Additional Restraints.** Additional approved restraint devices may be used to secure an individual who violently resists and poses a threat to themselves, the officer, other detainees, or the public.
- 5.7. Transition from Handcuffs to Full Restraints.** Arrestees handcuffed at the time of arrest should be transitioned to full restraints as soon as practicable once officers have identified a safe and secure location for the transition and sufficient officers are present, unless it is anticipated that the final destination (detention facility, ICE office, or other LEA facility) will be reached in less than one hour.
- 5.8. Additional Responsibilities.** When ICE personnel have reason to believe that an alien in their custody is a known escape risk or will be located in an unsecure area for an extended period of time, such as a hospital (for example, doctors may request restraints be removed for treatment), supervisors must plan for additional officers, appropriate restraints, and/or make alternate arrangements.
- 5.9. Non-ICE Processing Site or Detention Facility Procedures.** Upon arrival at the processing site or non-ICE detention facility, ICE personnel shall follow all local policies and procedures regarding use of restraints in place at that location.
- 5.10. Use of Restraints during Transportation of Detainees by ERO Officers.** Except in exigent circumstances, or as provided for in sections 5.3 and 5.4, ERO officers will utilize full restraints when transporting detainees.
- 5.11. Use of Restraints on Commercial Aircraft.** Airlines are under no obligation to transport detainees and may reject the officer and his/her detainee for a variety

of reasons. Corporate airline policy on the types and the use of restraints varies between airlines and airports. The aircraft's captain has the ultimate authority to determine the use of restraining devices on any flight. If the captain's decision is unacceptable, the officer shall deplane and make other arrangements. This procedure fully complies with current FAA and TSA regulations.

6. Authorities/References.

- 6.1.** Title 8, United States Code, Section 1357 (INA 287)
 - 6.2.** Title 8, Code of Federal Regulations, Part 287 (8 CFR 287)
 - 6.3.** ICE Directive 19006.1 Escapes from Custody (August 16, 2012)
 - 6.4.** M-69 The Law of Arrest, Search and Seizure for Immigration Officers (January 1993)
 - 6.5.** National Firearms and Tactical Training Unit Authorized Restraint Devices (January 11, 2012)
- 7. No Private Right.** These guidelines and priorities are not intended to, do not, and may not be relied upon to create any right or benefit, substantive or procedural, enforceable by law by any party in any administrative, civil, or criminal matter.



Gary Mead
Executive Associate Director
Enforcement and Removal Operations
U.S. Immigration and Customs Enforcement

NOV 26 2003



**U.S. Immigration
and Customs
Enforcement**

**MEMORANDUM FOR ALL SPECIAL AGENTS-IN-CHARGE
ALL FIELD OFFICE DIRECTORS**

FROM: Michael J. Garcia
Assistant Secretary

SUBJECT: Superceding Guidance re. Implementation of General Arrest Authority

The purpose of this memorandum is to implement General Arrest Authority for legacy Immigration and Naturalization Service (INS) enforcement officers. It replaces the November 4, 2003 memorandum on this issue. This memorandum will ensure all U.S. Immigration and Customs Enforcement (ICE) officers have the required tools, authorities, and training to perform their duties. Legacy Customs Special Agents will continue to use their existing authority under Customs law, regulations and policies, including specific guidelines for responding to violations of state laws, so no additional actions are required for those employees at this time.

Immigration enforcement officers often encounter violators of federal laws in the course of their normal duties. Recognizing this, Congress included provisions in the Immigration Act of 1990 to enhance the authority of INS officers to make arrests for non-immigration offenses.

Section 287(a)(5)(A) of the Act provides immigration officers with the statutory authority to make arrests without a warrant "for any offense against the United States, if the offense is committed in the officer's...presence...if the officer...is performing duties relating to the enforcement of the immigration laws at the time of the arrest...." This enhanced arrest authority is commonly referred to as "General Arrest Authority."

This memorandum modifies the August 29, 1994, policy memorandum regarding the implementation of section 287(a)(5)(A) as it pertains to the legacy INS enforcement components now assigned to ICE. ICE Special Agents, Deportation Officers, and Immigration Enforcement Agents who have successfully completed basic immigration law enforcement training may make arrests without warrants for federal non-immigration offenses committed in their presence when there is a likelihood the person will escape before an arrest warrant can be obtained. General Arrest Authority under section 287(a)(5)(A) does not apply to state laws or local ordinances, or to offenses not committed in an officer's presence.

Please ensure that all offices under your jurisdiction implement these instructions immediately.

U.S. Department of Homeland Security
Bureau of Immigration and Customs Enforcement

425 I Street NW
Washington, DC 20536

NOV - 4 2003

MEMORANDUM FOR ALL SPECIAL AGENTS-IN-CHARGE
ALL FIELD OFFICE DIRECTORS

FROM: Michael J. Garcia 
Acting Assistant Secretary

SUBJECT: Implementation of General Arrest Authority

The purpose of this memorandum is to implement General Arrest Authority for legacy Immigration and Naturalization Service (INS) enforcement officers. This will ensure all Bureau of Immigration and Customs Enforcement (ICE) officers have the required tools, authorities, and training to perform their duties. Legacy Customs Special Agents will continue to use their existing authority under Customs law, regulations and policies, including specific guidelines for responding to violations of state laws, so no additional actions are required for those employees at this time.

Immigration enforcement officers often encounter violators of federal laws in the course of their normal duties. Recognizing this, Congress included provisions in the Immigration Act of 1990 to enhance the authority of INS officers to make arrests for non-immigration offenses.

Section 287(a)(5)(A) of the Act provides immigration officers with the statutory authority to make arrests without a warrant "for any offense against the United States, if the offense is committed in the officer's ...presence." This enhanced arrest authority is commonly referred to as "General Arrest Authority."

This memorandum modifies the August 29, 1994, policy memorandum regarding the implementation of section 287(a)(5)(A) as it pertains to the legacy INS enforcement components now assigned to ICE. ICE Special Agents, Deportation Officers, and Immigration Agents may make arrests without warrants for federal non-immigration offenses committed in their presence when there is a likelihood the person will escape before an arrest warrant can be obtained. General Arrest Authority does not apply to state laws or local ordinances.

Please ensure that all offices under your jurisdiction implement these instructions immediately.

Memorandum

RECEIVED

(b)(6),(b)(7)(C)

SEP 01 1994

BORDER PATROL ACADEMY
OLYNCO, GEORGIAcc:
EXEC
STAFF
9/1

Subject

General Arrest Regulations -
Implementation

Date

AUG 29 1994

To INS Management Team
District Directors
Chief Patrol AgentsFrom Office of the
Commissioner

Attached is a copy of the General Arrest Regulations which were published as a final rule in the Federal Register on August 17, 1994.

The effective date for all sections of the regulations is one year from date of publication, during which time a training curriculum will be developed and approximately 10,000 immigration officers trained and certified in new enforcement authorities and standards. This will ensure a unified implementation approach nationwide rather than one whereby some immigration officers have general arrest authority while other officers do not because they are awaiting training and certification.

It is important to note that the statute stipulates that no immigration officer has full general arrest authority until such time as he or she has received certification as having completed a training program which covers the general arrest provisions and the enforcement standards. Also, I do not intend to grant authority to immigration officers to implement any section of the general arrest regulations prior to completion of the training and certification process Servicewide. Upon completion of that process, I will notify you of the specific date that the regulations are to be implemented. Please ensure that all immigration officers under your jurisdiction understand that at this point in time they are not authorized to enforce the general laws of the United States. This does not effect their ability to continue to exercise their current authorities.

In addition to the General Arrest training, the regulations require the successful completion of basic immigration law enforcement training, or training deemed substantially equivalent thereto, in order to exercise any of the enforcement authorities. The Director of Training will be issuing guidelines regarding the process for satisfying all of the training requirements identified in the regulations.

You should take pride in knowing that the Department of Justice intends to utilize these regulations as a model for all other law enforcement agencies seeking the Attorney General's

FILE COPY

Page 2
INS Management Team
District Directors
Chief Patrol Agents

authorization. In fact, the Immigration and Naturalization Service (Service) is the first Federal agency required by statute to establish and codify enforcement standards.

These regulations are of utmost importance to the Service. By establishing clear policy objectives, proper training criteria, and high standards of conduct, the regulations will ensure consistent law enforcement practices and advance my goal of making the Service a model of professionalism. I seek your support and cooperation throughout the implementation process.


Doris Meissner
Commissioner

Attachment

No. 09-5193-cr
USA v. Hassock (USA)

**UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT**

August Term 2010

(Argued: October 5, 2010)

Decided: January 28, 2011)

Docket No. 09-5193-cr

UNITED STATES OF AMERICA,

Appellant,

– v. –

ERIC HASOCK,

Defendant-Appellee.

Before: MINER, B.D. PARKER, AND RAGGI, *Circuit Judges.*

Appeal from an Order entered November 20, 2009, in the United States District Court for the Southern District of New York (Jones, J.), after a hearing, suppressing as the product of an unreasonable search, a firearm discovered during a purported protective sweep of the defendant-appellee's bedroom, the government having certified that the suppressed firearm is substantial proof of a fact material to the prosecution of an indictment charging defendant-appellee with being a felon in possession of a firearm.

Affirmed.

JENNIFER E. BURNS, Michael A. Levy, Assistant United States Attorneys (*for* Preet Bharara, United States Attorney for the Southern District of New York), New York, New York, for Appellant.

STANISLAO A. GERMÁN, Law Office of Stanislo A. Germán, New York, New York, for Defendant-Appellee.

1 MINER, *Circuit Judge*:

2 The government appeals from an Order entered November 20, 2009, in the United
3 States District Court for the Southern District of New York (Jones, J.), suppressing as
4 evidence a handgun allegedly belonging to defendant-appellee Eric Hassock, a/k/a David
5 St. Walton, a/k/a Basil LNU ("Hassock"). The government proposed to enter the firearm
6 into evidence as proof of a fact material in the prosecution of Hassock for being a felon in
7 possession of a firearm. The District Court determined, after a hearing, that the firearm
8 was secured as the result of an unreasonable search of Hassock's bedroom. The
9 government contends on appeal, as it did below, that the handgun in question was
10 discovered in the course of a proper protective sweep. We affirm for the reasons set forth
11 below.

12 BACKGROUND

13 I. Investigation

14 In reciting the background for our analysis in this case, we rely essentially on the
15 factual findings made by the District Court.

16 The investigation that led to Hassock's indictment for being a felon in possession
17 of a firearm began with information received from a confidential source. The information
18 was supplied to Senior Special Agent Christopher Quinn ("Agent Quinn" or "Quinn") of
19 the Department of Homeland Security, Immigration and Customs Enforcement ("ICE") in
20 November 2008. Agent Quinn identified the confidential source as "CS-1" in a complaint
21 filed on January 22, 2009, in support of an arrest warrant for Hassock. In the complaint,
22 Agent Quinn stated

23 that CS-1 saw BASIL LNU, a/k/a "David St. Walton," the defendant, with a
24 black semiautomatic handgun in BASIL LNU's home, which is located in
25 the basement apartment at 3201 Mickle Avenue in the Bronx, New York.
26 CS-1 identified the building to me and other law enforcement agents and

1 described the layout of the basement apartment. CS-1 further stated that
2 BASIL LNU is a marijuana dealer. CS-1 also provided me with a picture of
3 BASIL LNU. CS-1 further stated that CS-1 believes BASIL LNU is an
4 illegal alien and is from Jamaica.

5 The investigation was pursued by an inter-agency task force (the "Task Force")
6 that included Agent Quinn and law enforcement personnel detailed from the Drug
7 Enforcement Administration, the Federal Bureau of Investigation, the New York Police
8 Department, the New York State Police, and the Internal Revenue Service. In the course
9 of the investigation, the Task Force acquired information that "Basil" occupied the front
10 bedroom in the basement apartment in which he resided; that he stayed out late, slept late,
11 usually departed from his apartment around noon, and had no known legal employment.
12 Moreover, the photograph and physical description provided to Quinn by the confidential
13 informant showed Basil to be an African-American male approximately six feet tall and
14 weighing approximately 220 pounds.

15 In order to obtain the true identity of "Basil," which was then unknown, the Task
16 Force conducted residence checks and record checks. These efforts were unsuccessful,
17 and the Task Force resolved to speak with the subject of their investigation at his home.
18 Accordingly, on November 25, 2008, Agent Quinn and four other Task Force members
19 headed to the basement apartment at 3201 Mickle Avenue. The purpose of the visit,
20 according to Quinn, was to conduct surveillance and to "knock and talk," that is to
21 "knock on the door and interview potential residents to see if the information that we
22 have is accurate, to see if there is any further follow-up investigation we can do." Tr. at
23 15. More specifically, Agent Quinn described the "initial reason" for the visit as an
24 opportunity to talk to "Basil" and "another reason" as "to potentially arrest him." Id.

25 II. Surveillance and Entry

26 When Agent Quinn and the other members of the Task Force arrived at 3201

1 Mickle Avenue on November 25 at approximately 8:00 a.m., they took up surveillance
2 from their vehicle outside the building. After about an hour, during which no one was
3 seen entering or leaving the basement apartment, the Task Force made the decision to
4 pursue their investigation by simultaneously knocking on the front and rear doors of the
5 apartment. On cross-examination at the suppression hearing, Quinn agreed that “[t]he
6 purpose of knocking on the door[s] was to have this conversation with a person whom
7 [he] believed was known as Basil.” Id. at 18.

8 Agent Quinn and two other members of the Task Force knocked on the front door,
9 and two members knocked on the rear door after entering the fenced-in area of the yard.
10 Those at the front door received no response after knocking for about a minute, but Quinn
11 then received word by radio from those at the rear that the door there was being opened.
12 Quinn then walked to the rear of the building and there found a woman inside the
13 apartment speaking to members of the Task Force.

14 At that point, according to Quinn, “[t]here was a brief exchange about who’s here.
15 The young lady said, essentially, I don’t know, you guys woke me up. Is anyone else in
16 the apartment, words back and forth like that. Can we look around? And she said yes.”
17 Id. at 6. Quinn did not recall whether he overheard this conversation or whether it was
18 repeated to him by another member of the Task Force. In any event, Quinn himself had
19 no conversation with the woman who opened the door, nor did he or any other Task Force
20 member ascertain her identity or question her further before proceeding into the interior
21 of the apartment.

22 III. “Sweep,” Discovery, and Seizure

23 In what the government described as a protective sweep, Quinn and another
24 member of the Task Force, Detective John Salvetti (“Detective Salvetti”), passed through

1 the apartment directly to the front where a bedroom was located. Quinn believed that this
2 bedroom was occupied by “Basil,” whose true identity still was unknown to him. In
3 approaching the bedroom, Quinn had his gun drawn (or had his hand on his gun), being
4 concerned that Basil “could come out with a firearm or a gun or pose a danger.” Id. at 24.
5 The bedroom, measuring approximately ten feet by ten feet, was one of two bedrooms in
6 what Quinn described as a “pretty small” apartment, which included a living room,
7 kitchen, and a common or storage area. Id. at 22.

8 The front bedroom was taken up for the most part by a queen-sized bed on a frame.
9 Once inside the bedroom, Detective Salvetti walked around the bed, and Quinn squatted
10 down to look under the bed. Underneath the bed, and six to eight inches from the edge of
11 the bed, Quinn discovered a Hi-Point .380 caliber pistol with a defaced serial number. It
12 is this pistol that forms the basis of the firearm count with which Hassock was charged.
13 Members of the Task Force also looked around the common area and underneath and
14 behind a sofa. They remained in the apartment for a couple of hours. During that time,
15 they spoke in some depth with the woman who had answered the door. They then learned
16 that her name was Shareel Coley, that she was employed at Nordstrom in White Plains,
17 that she occupied the back bedroom with her boyfriend, that the front apartment was
18 occupied by “Bas” or “Basil” whose full name was unknown to her, and that she had been
19 staying in the apartment for approximately one month. Apparently, the officers later
20 learned from other sources that the person known as “Basil” is Eric Hassock and is also
21 known as David St. Walton.

22 IV. Proceedings in the District Court

23 An indictment filed on March 13, 2009, in the Southern District of New York
24 charged that Hassock,

1 being an alien, unlawfully, willfully, and knowingly, did enter and was
2 found in the United States, after having been deported from the United
3 States on or about September 1, 2004, subsequent to a conviction for the
4 commission of a felony, to wit, a conviction on or about April 6, 2000, in
5 New York State County Court, Nassau County, for Criminal Possession of
6 Marijuana in the Second Degree, in violation of New York Penal Law
7 221.25, without having obtained the express consent of the Attorney
8 General of the United States or his successor, the Secretary for the
9 Department of Homeland Security, to reapply for admission.

10 (Title 8, United States Code, Sections 1326(a) & (b)(1).)

11 The indictment also charged that Hassock

12 unlawfully, willfully, and knowingly, after having been convicted in a court
13 of a crime punishable by imprisonment exceeding one year, to wit, a
14 conviction on or about April 6, 2000, in New York State County Court,
15 Nassau County, for Criminal Possession of Marijuana in the Second
16 Degree, in violation of New York Penal Law 221.25, did possess in and
17 affecting commerce, a loaded firearm, to wit, a .380 caliber Highpoint
18 Semiautomatic handgun, with a defaced serial number, which previously
19 had been shipped and transported in interstate and foreign commerce.

20 (Title 18, United States Code, Section 922(g)(1).)

21 By motion filed on June 9, 2009, Hassock sought to suppress from the evidence to
22 be introduced at trial the firearm seized from his bedroom, contending it was discovered
23 as the result of an illegal search. In support of his motion, Hassock filed his own
24 affidavit, an affirmation by his attorney, and a memorandum of law. On June 18, 2009,
25 the government filed a memorandum of law in opposition to the motion, contending that
26 the firearm was seized during a lawful protective sweep. The District Court scheduled a
27 hearing on the motion for June 26, 2009. The hearing was conducted on that date, and
28 Agent Quinn was the only witness to testify. The court also heard the oral arguments of
29 counsel, reserved decision at the conclusion of the hearing, and issued its Opinion and
30 Order granting the motion on November 20, 2009.

31 In finding that the search of Hassock's bedroom was unreasonable, the court
32 carefully considered the government's contention that the entry into Hassock's bedroom

1 was justified by the protective sweep doctrine first described by the Supreme Court in
2 Maryland v. Buie, 494 U.S. 325 (1990). There, as the District Court correctly
3 summarized, “the Supreme Court applied the Fourth Amendment reasonableness test and
4 permitted a limited warrantless search, or protective sweep, in a home by officers who
5 were executing an arrest warrant inside the home and who had a reasonable suspicion that
6 an individual posing a threat to the officers was present elsewhere on the premises.”
7 United States v. Hassock, 676 F. Supp. 2d 154, 158 (S.D.N.Y. 2009). The District Court
8 also correctly observed that we had extended Buie beyond the arrest warrant context to
9 situations where officers enter a home under lawful process such as an order of
10 protection. Id. at 159–60 (discussing United States v. Miller, 430 F.3d 93 (2d Cir. 2005)).

11 In the case at bar, the District Court determined “that the search was supported by
12 a reasonable suspicion of danger and it did not exceed the scope of a protective sweep,
13 [and that] the Court must decide whether the protective sweep doctrine applies in this
14 context.” Id. at 159. In concluding that the protective sweep doctrine did not apply “in
15 this context,” and granting suppression of the seized handgun, the court opined as
16 follows:

17 In all, a protective sweep may be reasonable, and therefore constitutional,
18 where officers enter a suspect’s home in order to execute a warrant, to
19 enforce an order of protection, or pursuant to exigent circumstances. And
20 there may be circumstances where police enter by consent and truly
21 emergent conditions then arise. Here, however, by making a voluntary
22 decision to enter the Apartment at approximately 9:00 AM on November
23 25, 2008, the task force put themselves at risk of the very danger that
24 necessitated the protective sweep. And nothing the officers learned upon
25 entering — i.e. that the Defendant might be there — was new to them.
26 Accordingly, the Court finds that the search of Defendant’s bedroom was
27 unreasonable under the Fourth Amendment. . . .

28 Id. at 161–62.

1 The government filed a timely Notice of Appeal of the District Court's Order
2 granting the motion to suppress and a certification, pursuant to 18 U.S.C. § 3731, that the
3 appeal "is not taken for purpose of delay, and that the evidence suppressed pursuant to the
4 November 20 Order is a substantial proof of a fact material in the proceeding."

5 ANALYSIS

6 I. Evolution of the Protective Sweep Doctrine

7 The Fourth Amendment protects "[t]he right of the people to be secure in their
8 person, houses, papers and effects against unreasonable searches and seizures." U.S.
9 Const. amend IV. Because "the physical entry of the home is the chief evil against which
10 the wording of the Fourth Amendment is directed," Payton v. New York, 445 U.S. 573,
11 585 (1980) (internal quotation marks omitted), "[i]t is a basic principle of Fourth
12 Amendment law that searches inside a home without a warrant are presumptively
13 unreasonable," Brigham City, Utah v. Stuart, 547 U.S. 398, 403 (2006) (internal quotation
14 marks omitted). The Supreme Court found the presumption to be rebutted in the case of
15 searches that fall under the definition of "protective sweep": "A 'protective sweep' is a
16 quick and limited search of premises, incident to an arrest and conducted to protect the
17 safety of police officers or others. It is narrowly confined to a cursory visual inspection
18 of those places in which a person may be hiding." Buie, 494 U.S. at 327.

19 Buie had its genesis in the armed robbery of a restaurant by two men, one of whom
20 was wearing a red running suit. Investigation apparently led to Buie and an accomplice,
21 and police secured arrest warrants for both. After conducting surveillance of Buie's
22 house and learning that he was inside, police officers entered and dispersed throughout
23 the first and second floors. One officer shouted into the basement, identifying himself as
24 the police and asking anyone present to come out. Buie eventually emerged and was

1 taken into custody. Thereafter, another officer entered the basement where Buic had been
2 to search for anyone else who might be there. Although no one else was found to be
3 present, the officer did discover a red running suit in plain sight atop a pile of clothes. It
4 was this suit that Buic sought to suppress at the trial, where he ultimately was convicted
5 by a state court jury for robbery with a deadly weapon and using a handgun in the
6 commission of a robbery. Id. at 328.

7 In articulating the protective sweep doctrine, the Supreme Court found “most
8 instructive” its holding in Terry v. Ohio, 392 U.S. 1 (1968), authorizing in a street
9 encounter with police “a limited patdown for weapons where a reasonably prudent officer
10 would be warranted in the belief, based on specific and articulable facts, and not on a
11 mere inchoate and unparticularized suspicion or hunch, that he is dealing with an armed
12 and dangerous individual.” Buic, 494 U.S. at 331–32 (internal quotations and citations
13 omitted). The Court noted that “[i]n Michigan v. Long, 463 U.S. 1032 (1983), the
14 principles of Terry were applied in the context of a roadside encounter.” Buic, 494 U.S.
15 at 332. In Long, the Court approved the search of areas of the passenger compartment of
16 an automobile where a weapon might be discovered, provided that facts and inferences
17 available to a searching officer reasonably warranted the officer’s belief that a suspect
18 was dangerous and might gain control of the weapon. See Long, 463 U.S. at 1049–50.
19 The Buic Court noted that “[i]n a sense, Long authorized a ‘frisk’ of an automobile for
20 weapons.” Buic, 494 U.S. at 332. In a similar sense, Buic authorized a “frisk” of areas in
21 a house for a dangerous individual who might be hiding there.

22 The Supreme Court in Buic formulated the issue before it as “what level of
23 justification is required by the Fourth and Fourteenth Amendments before police officers,
24 while effecting the arrest of a suspect in his home pursuant to an arrest warrant, may

1 conduct a warrantless protective sweep of all or part of the premises.” Id. at 327
2 (emphasis supplied). The Court resolved the issue as follows: “The Fourth Amendment
3 permits a properly limited protective sweep in conjunction with an in-home arrest when
4 the searching officer possesses a reasonable belief based on specific and articulable facts
5 that the area to be swept harbors an individual posing a danger to those on the arrest
6 scene.” Id. at 337 (emphasis supplied). The Supreme Court thus has had occasion to
7 apply the protective sweep doctrine only in the context of an in-house arrest pursuant to
8 an arrest warrant.

9 We have interpreted the Buie decision to allow a protective sweep of a house
10 where entry was made by police pursuant to “lawful process.” See United States v.
11 Miller, 430 F.3d 93, 95 (2d Cir. 2005). In Miller, police officers accompanied a man who
12 had secured an order of protection into an apartment he had shared with the subject of the
13 order, who had threatened to “‘put a bullet through his head.’” Id. at 96. Entry was made
14 pursuant to the terms of the order, which permitted the removal of personal belongings in
15 the apartment. When the subject of the order sought to enter a bedroom, an officer gave
16 him permission to do so but followed him into the bedroom “‘[f]or safety.’” Id.
17 (alteration in original). There the officer observed a shotgun standing upright in an open
18 closet. The shotgun in Miller, like the handgun in this case, gave rise to a charge of
19 possession of a firearm after a previous conviction for a felony. Id.

20 In arriving at our conclusion in Miller, we observed that “[a]t the core of Terry,
21 Long and Buie is the common understanding that the Fourth Amendment’s
22 reasonableness requirement is sufficiently flexible to allow officers who have an
23 objectively credible fear of danger to take basic precautions to protect themselves.” Id. at
24 98. Accordingly, we proceeded to

1 hold that a law enforcement officer present in a home under lawful process,
2 such as an order permitting or directing the officer to enter for the purpose
3 of protecting a third party, may conduct a protective sweep when the officer
4 possesses articulable facts which taken together with the rationale
5 inferences from those facts would warrant a reasonably prudent officer in
6 believing that the area to be swept harbors an individual posing a danger to
7 those on the scene.

8 Id. (internal quotation marks and alteration omitted). We found justification for the
9 officer's concern for his safety in the order of protection itself, in the officer's knowledge
10 that an emotional domestic dispute was involved and, of course, in the threat by the
11 subject of the order that he would shoot his former roommate in the head. Id. at 101.

12 Where officers cannot supply specific and articulable facts warranting a reasonably
13 prudent officer to believe that an individual posing a danger is lurking in an area to be
14 swept, we have found lacking an essential element necessary to justify a search under the
15 protective sweep doctrine as defined in Buie. See United States v. Vargas, 376 F.3d 112,
16 117 (2d Cir. 2004). In Vargas, the defendant allowed two investigating agents into his
17 hotel room and permitted them to look around the room. The agents apparently found
18 nothing in the room and proceeded to interview the defendant. Noticing the bathroom
19 door ajar, one of the agents headed to the bathroom and was told by the defendant that he
20 could not enter. The agents called in a third agent, and one of the three entered the
21 bathroom and found heroin there. Id. at 113. In rejecting the contention that the search
22 of the bathroom was a protective sweep, we "conclude[d] that the agents' testimony did
23 not provide sufficient articulable facts that would warrant a reasonably prudent officer to
24 believe that an individual posing a danger to the agents was hiding in the bathroom of
25 [defendant's] motel room." Id. at 116.

26 A similar lack of specific facts as to the presence of a lurking danger foreclosed
27 application of the protective sweep doctrine in United States v. Gandia, 424 F.3d 255,

1 264 (2d Cir. 2005). Responding to a confrontation between the defendant and the
2 superintendent of the building where he resided, police officers requested and received
3 permission to go to the defendant's apartment to discuss the situation. The reason the
4 officer gave for the request was that there was insufficient privacy outside, it was raining,
5 and they wished to separate the protagonists. Id. at 258. The officers did not request or
6 receive permission to search the apartment, but one of the officers moved about the
7 apartment "for safety" reasons although the defendant told him that no one was present.
8 Id. at 259. A .45 caliber bullet in plain view led to a further search and ultimately to a
9 search warrant that resulted in the discovery of a gun and additional ammunition. Id. at
10 259–60.

11 Rejecting the application of the protective sweep doctrine for lack of an essential
12 element, in Gandia we found that there was "nothing in the record from which a
13 reasonable police officer could have inferred that there was a specific danger of unknown
14 third-parties hiding in [defendant's] apartment." Id. at 264. With respect to the question
15 of consent, we provided this caveat: "Although we do not decide this issue, we do note
16 that when police have gained access to a suspect's home through his or her consent, there
17 is a concern that generously construing Buie will enable and encourage officers to obtain
18 that consent as a pretext for conducting a warrantless search of the home." Id. at 262.

19 And with further respect to the basis for entry in the application of the protective sweep
20 doctrine, we had this to say in Gandia: "In the instant case — unlike when officers enter a
21 suspect's home in order to execute an arrest warrant or under exigent circumstances —
22 there was no need for the police officers to enter [defendant's] home in the first place.
23 They were there for their own convenience (and perhaps for his) while taking his
24 statement." Id. at 263.

1 There exists a circuit split amongst our sister circuits relevant to the proper basis
2 for entry into a home in connection with the conduct of a protective sweep. The Ninth
3 and Tenth Circuits have applied the protective sweep doctrine only where entry has been
4 made incident to an arrest in the home, declining to extend the specific parameters of the
5 doctrine as announced in Buie. See United States v. Torres-Castro, 470 F.3d 992, 997
6 (10th Cir. 2006) (noting, in connection with application of the doctrine that “protective
7 sweeps must be performed incident to an arrest”); United States v. Reid, 226 F.3d 1020,
8 1028 (9th Cir. 2000) (concluding “that the warrantless search of apartment 101” was not a
9 protective sweep and was not justified by exigent circumstances).

10 The First, Fifth, Seventh, and D.C. Circuits have extended the doctrine to allow
11 protective sweeps of living quarters in non-arrest situations. See United States v.
12 Martins, 413 F.3d 139, 149 (1st Cir. 2005) (holding, where a boy was in need of
13 emergency assistance and “notwithstanding the absence of a warrant, the officer’s entry
14 into the defendant’s apartment was justified by exigent circumstances”); Leaf v. Shelnutt,
15 400 F.3d 1070, 1087 (7th Cir. 2005) (upholding protective sweep where exigent
16 circumstances, suspicion of burglary, justified entry, and officers “had substantial reason
17 to believe that their safety might have been at risk”); United States v. Gould, 364 F.3d
18 578, 590 (5th Cir. 2004) (in banc) (holding prospective sweep valid where officers
19 admitted to a mobile home by co-occupant “for a legitimate governmental purpose,” i.e.,
20 to question the defendant about threats); United States v. Taylor, 248 F.3d 506, 513 (6th
21 Cir. 2001) (“[T]he principle enunciated in Buie with regard to officers making an arrest
22 — that the police may conduct a limited protective sweep to ensure the safety of those
23 officers — applies with equal force to an officer left behind to secure the premises while
24 a warrant to search those premises is obtained.”); United States v. Patrick, 959 F.2d 991,

1 996–97 (D.C. Cir. 1992) (upholding a protective search where “police were lawfully on
2 premises” pursuant to consent of the lessee to search the apartment and, under the
3 circumstances, the occupant’s bedroom).

4 II. The Protective Sweep Doctrine and the Search of Hassock’s Bedroom

5 Although we have joined the majority of our sister circuits to the extent that they
6 conclude “that specific, articulable facts giving rise to a reasonable inference of danger
7 may justify a protective sweep in circumstances other than during the in-home execution
8 of an arrest warrant,” Miller, 430 F.3d at 100 (emphasis supplied), we have done so only
9 in a case where officers entered a home “under lawful process,” in that case an order of
10 protection, id. at 98. The government recognizes that we have yet to decide whether a
11 protective sweep may be conducted where officers enter a dangerous suspect’s home
12 incident to another purpose and urge us to follow the lead of the Fifth and D.C. Circuits,
13 which have permitted protective sweeps where consent has been obtained for entry.

14 In Gould, the Fifth Circuit found that the officers were “in the mobile home for a
15 legitimate governmental purpose,” and that purpose was to question the defendant about
16 information they had received about the defendant’s threat to kill two judges. Gould, 364
17 F.3d at 590. The police were admitted to the trailer by another resident, who indicated
18 that defendant was probably asleep in his bedroom and that the police “could come in and
19 check it out.” Id. at 588. As in the case at bar, the resident had no authority to consent to
20 the search of the bedroom, but the police entered it for safety reasons and there observed
21 rifles that were to become the subject of the motion to suppress. Id. In reversing the
22 district court’s order of suppression, the in banc Circuit Court concluded that a protective
23 sweep was valid under the circumstances, all the essential elements specified in Buie

1 having been established and the officers having gained entry to the mobile home for the
2 legitimate purpose of interviewing the defendant. Id. at 593.

3 Similarly, in United States v. Patrick, 959 F.2d 991 (D.C. Cir. 1992), the D.C.
4 Circuit held that “[o]nce the police were lawfully on the premises, they were authorized to
5 conduct a protective sweep.” 959 F.2d at 996. There, the lessee of an apartment
6 requested the assistance of the police in removing an occupant of the apartment who
7 apparently refused to leave. The police were admitted to the apartment by the lessee,
8 found four people in the living room, and proceeded to a bedroom, where they found the
9 occupant, discovered drugs and drug paraphernalia in plain view, and conducted a further
10 search in which they found, inter alia, a gun under the bed. The firearm and drug
11 contraband seized during the search formed the basis for various charges against the
12 occupant, who sought to suppress these items from use at his trial. The D.C. Circuit
13 determined that the lessee was authorized to consent to the search of the occupant’s
14 bedroom since the occupant was a “squatter” in the apartment. Id. The court opined that
15 the “lawful presence” of the police on the premises with the consent of the lessee
16 provided them with sufficient “authori[ty] to conduct a protective sweep based on their
17 reasonable belief that one of the [apartment’s] inhabitants was trafficking in narcotics.”
18 Id. The court reasoned that the plain view doctrine provided the police officers with
19 authority to seize the drugs and that this observation provided the probable cause to
20 search the area under the occupant’s immediate control, including the area under the bed.
21 Id.

22 In this case, it is not necessary to determine whether the protective sweep
23 exception is limited to situations involving the execution of legal process (as was the case
24 in Miller) or extends (as the government urges) to any situation where police are lawfully

1 on the premises for a legitimate governmental reason antecedent to the sweep. Certainly
2 the agents here had no legal process and, although they went to the Hassock apartment
3 with a legitimate purpose — the questioning and possible arrest of Hassock — when
4 Hassock did not answer the door, that purpose could not be pursued until Hassock was
5 found. Under these circumstances, the sweep cannot be viewed as a reasonable security
6 measure incident to Hassock's interrogation or arrest. Instead, the "sweep" itself became
7 the purpose for the agents' continued presence on the premises insofar as they thereby
8 searched the location for Hassock. As the district court found, it may have been
9 objectively reasonable for agents to think that Hassock's presence on the premises posed
10 a danger to their safety. See United States v. Hassock, 676 F. Supp. 2d at 158–59. But a
11 protective sweep is reasonable only to safeguard officers in the pursuit of an otherwise
12 legitimate purpose. Where no other purpose is being pursued, a sweep is no different
13 from any other search and, therefore, requires a warrant, exigency, or authorized consent,
14 none of which were present here. Specifically, it was not apparent to the agents of the
15 task force that the young woman who admitted them to the apartment was clothed with
16 any authority that would allow her to consent to a search of the premises. Her discussion
17 with the agents was very brief — she said she had just awakened, that she did not know
18 who was present in the apartment, and answered in the affirmative in response to an
19 agent's request to "look around." It was not until after the search was complete that the
20 agents spent some time with the woman, learned her identity, her relationship with the co-
21 tenant of the apartment, and other information. And so it was that, with the limited
22 information available and without ascertaining the woman's authority to consent, the
23 officers pressed forward in a search for Hassock. (The government concedes that there
24 was no authority of any kind to enter Hassock's bedroom). The original purpose of the

1 “knock and talk” thereupon became an illegitimate search for Hassock incident to no
2 other lawful police conduct, which cannot be characterized as a protective sweep.

3 In a post-argument submission, the government asserts that a legitimate
4 investigative purpose for a protective sweep after the initial meeting with the woman was,
5 based on her questionable consent, to look around the “common area” of the apartment to
6 locate Hassock and to determine whether he was “willing to be interviewed.” The
7 government did not advance this theory in the District Court, presenting no evidence that
8 would allow the District Court to assess its credibility, let alone its legal sufficiency.
9 Accordingly, we deem it forfeited on appeal. See, e.g., Kendall v. Emps. Ret. Plan of
10 Avon Prods., 561 F.3d 112, 123 (2d Cir. 2009). Further, the original purpose of the
11 investigation was not to interview the woman (which they did not do until long after the
12 search was completed) or to search for Hassock, but to talk to him and possibly arrest
13 him. In pressing past the sole known occupant of the apartment and going forward with
14 the search of the apartment, the purpose of the agents was to locate Hassock and then to
15 return to their initial purpose of talking to him. Under the circumstances, the officers
16 undertook a full search for the object of their inquiry rather than a protective sweep
17 incident to an independent lawful purpose. They did so without a warrant, proper
18 consent, exigent circumstances, or even probable cause to believe that Hassock was
19 present. To the extent that our sister circuits hold differently under similar circumstances,
20 we respectfully decline to follow their lead.

21 CONCLUSION

22 For the foregoing reasons, we affirm the judgment of the District Court suppressing
23 the firearm found in Hassock’s bedroom.

U.S. Department of Homeland Security
425 I Street, NW
Washington, D.C. 20536



U.S. Immigration and Customs Enforcement

MEMORANDUM FOR: Field Office Directors APR 08 2005

FROM: Victor X. Cerda
Director

SUBJECT: Benefits Fraud Units Transfer
of Criminal Alien Referrals
from Office of Investigation of
Office of Detention and
Removal Operations

A handwritten signature in black ink, appearing to read "VX Cerda", with a large, stylized flourish at the end.

Purpose

Issuance of this memorandum will outline the procedures to be followed during the transition of responsibilities for US Citizenship and Immigration Services (CIS) Criminal Alien Referral Leads, from the Office of Investigations (OI) to the Office of Detention and Removal Operations (DRO).

Background

CIS processes over eight million immigration applications per year through their Service Centers. Applicants are subject to law enforcement background checks during the benefit process where many are identified as absconders, or are determined to have a criminal record that may make the individual subject to administrative proceedings. Currently, the CIS Fraud Detection Units (FDUs) at the five Service Centers in California, Texas, Vermont, Nebraska, and Missouri forward all cases amenable to removal, based on criminal charges, to OI for administrative processing through their Benefit Fraud Units (BFUs).

DRO also has an agreement with CIS where all cases, identified as fugitive aliens, are referred to the National Fugitive Operations Program Case Management Unit (CMU) in Laguna Niguel, CA where they are entered into the Fugitive Case Management System, assigned a tracking number, and sent to the field for appropriate action.

In a memorandum dated March 6, 2005, issued jointly by Victor X. Cerda, Director, DRO, and Marcy M. Forman, Director, OI, the transfer of administrative processing of criminal alien referrals, from OI to DRO, would take place no later than March 28, 2005. The effective date has been extended to April 4, 2005.

Effective April 4, 2005, cases where CIS makes the initial determination that the applicant is amenable to removal based on criminal charges will continue to be assessed by OI's BFU where a review and determination will be made if the case warrants criminal prosecution and/or if the case rises to a level of fraud requiring further investigation. If it is determined that the applicant was referred based on being amenable to removal pursuant to criminal convictions, the case will be referred to DRO's CMU where it will be handled similarly as those fugitive referrals in that it will be vetted, assigned a tracking number, and sent to the field for appropriate action.

It is important to note that no case will be referred to a Field Office Director (FOD) from any other office other than the CMU and that those cases received by CMU will only consist of those referred by one of the five FDU's. Pursuant to an agreement between DRO, OI and CIS, those cases being referred to DRO will be broken down into three caseload priorities; (1) Egregious Public Safety issues; (2) Aggravated Felons or those with a serious criminal history; and, (3) those with a criminal history not rising to a serious threat level.

As stated above, the CMU is presently receiving leads/correspondence from CIS's FDU regarding fugitives. Therefore, the mechanism for CIS to notify DRO is already in place. Utilizing the attached Request for Investigation, soon to be modified to more directly relate to DRO, the CMU will make a determination as to what course of action will be followed based on the information supplied by CIS.

For those cases where the subject poses an egregious public safety concern, the case will be immediately forwarded to the FOD for action, in these situations, the FOD will be required to obtain the necessary certified convictions, other supporting documentation, and in some cases, the A-file, to expedite the issuance of a charging document, in all other cases, the CMU will prepare a package consisting of the alien's file, charging document, supporting documentation and certified convictions, in addition, in those situations where the alien does not pose a serious threat, the CMU will prepare a G-56, call-in letter, and forward it to the alien's last known address, establishing a date to appear at the respective field office, not before 30 days. In these cases, the CMU will notify the FOD of the established date by sending the A-file and documentation via federal express.

In all cases, CIS will prepare a referral package, also known as the Request for Investigation. This package will normally consist of a cover page summarizing the case and reason for referral, a copy of the application filed, copies of record queries and results to include a warrant check and criminal history.

Action/Procedure

The CMU is responsible for tracking all leads and will do so through the establishment of call-up dates and the use of the Fugitive Case Management System. The FODs, upon receipt of a referral from CMU will immediately assign a Deportation Officer and/or a full authority Immigration Enforcement Agent, to make a determination as to what course of action is required. In those cases where the person poses an egregious public safety concern, the FOD will obtain the necessary documentation and issue a charging document leading to the immediate attempt to locate and

Subject: Benefits Fraud Units Transfer of Criminal Alien Referrals from Office of Investigation to Office of Detention and Removal Operations
Page 3

apprehend the subject. If the CMU has established a call-in date for the alien to appear, the office should be prepared for the alien's arrival and the potential for taking the subject into custody. Regardless of the action taken, the CMU is to be apprised of the end result; DACS is to be updated and these figures should be included in the weekly fugitive operations report, if appropriate.

Any questions regarding this policy and procedure should be addressed to (b)(6),(b)(7)(C) Chief, Fugitive Operations Unit, via e-mail or telephonically at (202)351 (b)(6),

UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
IMMIGRATION COURT
SAN FRANCISCO, CALIFORNIA

COPY

Matter of

(b)(6),(b)(7)(C)

Date:

File Number: (b)(6),(b)(7)(C)

Respondent

In Removal Proceedings

Charge:

Section 212(a)(6)(A)(i) of the Immigration and Nationality Act, as amended, as an alien present in the United States without being admitted or paroled, or who arrived in the United States at any time or place other than as designated by the Attorney General.

Application:

Motion to Suppress

On Behalf of Respondent:

(b)(6),(b)(7)(C)
Attorney at Law
P.O. Box 742
El Cerrito, California 94530

On Behalf of the DHS:

Scott A. Eash
Office of the Chief Counsel
120 Montgomery Street, Suite 200
San Francisco, California 94104

DECISION OF THE IMMIGRATION JUDGE

This Court hereby incorporates the facts and procedural history of the Immigration Judge's ("IJ") written decision dated August 19, 2009, and adds the following:

I. Procedural History

On August 19, 2009, this Court found that Respondent, (b)(6),(b)(7)(C) had established a prima facie case that the DHS's evidence was unlawfully obtained, and the burden shifted to the Department of Homeland Security ("DHS"). Exhibit 18. The Court ordered that a further hearing be held to afford the DHS an opportunity to justify the manner in which it obtained the evidence that was the subject of the motion to suppress. *Id.*

(b)(6),(b)(7)(C)

II. Facts

The evidence of record consists of testimony from Respondent, his father-in-law (b)(6),(b)(7)(C) and Deportation Officer (b)(6),(b)(7)(C). The record also contains the following documentary evidence submitted by the parties:

- Exhibit 1 Notice to Appear ("NTA");
- Exhibit 2 Respondent's motion to suppress;
- Exhibit 3 Respondent's written pleadings;
- Exhibit 4 DHS's opposition to Respondent's motion to suppress;
- Exhibit 5 Respondent's motion to dismiss for failure to preserve evidence;
- Exhibit 6 DHS's opposition to Respondent's motion to dismiss for failure to preserve evidence;
- Exhibit 7 Respondent's declaration;
- Exhibit 8 (b)(6),(b)(7)(C) declaration;
- Exhibit 9 U.S. Visit print-out for (b)(6),(b)(7)(C)
- Exhibit 10¹ Print out from DHS's internal system;
- Exhibit 11 Form-I-213, Record of Deportable/Inadmissible Alien, for Respondent;
- Exhibit 12 Form-I-213, Record of Deportable/Inadmissible Alien, for (b)(6),(b)(7)(C);
- Exhibit 13 Partial transcript from (b)(6),(b)(7)(C) prior deportation proceedings promising not to reenter illegally;
- Exhibit 14 Deposition of (b)(6),(b)(7)(C)
- Exhibit 15 Respondent's brief in support of a suppression hearing;
- Exhibit 16 DHS's opposition to Respondent's motion to suppress;
- Exhibit 17 Respondent's reply to DHS's opposition;
- Exhibit 18 Decision of the U, dated August 19, 2009;
- Exhibit 19 DHS's motion for reconsideration;
- Exhibit 20 Respondent's opposition to DHS's motion to reconsider;
- Exhibit 21 DHS's motion for continuance;
- Exhibit 22 DHS Field Operations Worksheet; and
- Exhibit 23 (b)(6),(b)(7)(C) declaration.

¹Exhibits 10-14, and 23 were marked for identification only and were not entered into the record.

(b)(6),(b)(7)(C)

A. Testimony of Deportation Officer (b)(6),(b)(7)(C)

When Officer (b)(6) testified, he had in front of him the Form-I-213s, Record of Deportable/Inadmissible Alien, for Respondent (b)(6),(b)(7)(C) and their target, and an internal system printout.

1. Direct Examination

(b)(6),(b)(7)(C) testified that he has been a Deportation Officer with Immigration and Customs Enforcement ("ICE") for six years. He received basic immigration officer training for three months, which included training in Fourth Amendment law and obtaining consent for an entry, reasonable suspicion and probable cause. He also received training regarding the Fourth Amendment in fugitive operations in 2008.

Officer (b)(6) testified that on July 25, 2008, he was part of the fugitive operations team sent to arrest an individual at 699 Biltmore Street in San Leandro, California. Officer (b)(6) arrived at that address at approximately 6:05 a.m., and Deportation Officers (b)(6),(b)(7) and (b)(6),(b)(7)(C) were already in the vicinity. When Officer (b)(6) arrived, he parked his car directly across the street from the residence and the officers planned to wait until any individual exited the house and approach him or her in an attempt to identify their target or find a way to enter the residence. They had an administrative arrest warrant for their target who was under a final order of removal, but there were no other outstanding warrants for that individual. Officer (b)(6) was wearing tactical gear, which included his agency issued tactical vest which displayed his ICE badge over his heart and a patch which stated "police" next to his badge and another larger "police" patch on his back. He wore his tactical belt which contained his service weapon, baton, handcuffs, and pepper spray. The other officers were dressed and equipped similarly.

Officer (b)(6) testified that he and the other two officers encountered Respondent's father-in-law, (b)(6),(b)(7)(C) as he left the garage and was heading towards a vehicle parked on the street. The three officers exited their vehicles and Officer (b)(6) identified himself in English as an officer with ICE. He did not identify himself as a police officer. Officer (b)(6),(b)(7)(C) stated that he is a native Spanish speaker and at no time did he have trouble communicating with (b)(6),(b)(7)(C) in Spanish or English. Officer (b)(6) stated that (b)(6),(b)(7)(C) understood that he was from ICE. All of the officers' weapons were holstered in their duty belts. After Officer (b)(6) identified himself, he informed (b)(6),(b)(7)(C) that they were looking for an individual whose last known address was the house he just exited. (b)(6),(b)(7)(C) did not say anything, so Officer (b)(6) asked if they could please come in and look for that individual. (b)(6),(b)(7)(C) said "yes," and Officer (b)(6) understood his "yes" to mean they could enter. (b)(6),(b)(7)(C) did not say no or that he did not have authority to let them in the house.

(b)(6),(b)(7)(C)

The three officers followed (b)(6),(b)(7)(C) into the garage to the door to his house, and nobody was touching (b)(6),(b)(7)(C). (b)(6),(b)(7)(C) opened the door to the house and there was a dog barking on the other side. They asked (b)(6),(b)(7)(C) to secure the dog somewhere in the house and he put the dog in the backyard. Once they saw the dog was secure, they then walked in. They asked (b)(6),(b)(7)(C) to call everyone in the house to a neutral meeting area, the dining room, and he did. (b)(6),(b)(7)(C) went upstairs to gather the people upstairs, and Officer (b)(6) and the other two officers knocked on a few doors located on the first floor for the same purpose. The officers did not open those doors, and people came out of those doors, including their target.

Officer (b)(6) testified that they sat the people in the dining room at the dining room table. About five minutes passed from the time they entered the door to when every one was seated at the table. In the English language, they identified themselves to the entire party, stating who they were and what they were doing there. Officer (b)(6) spoke to some people in Spanish and nobody stated they could not understand him. The officers informed the entire party that they were there for the target, who identified himself, and they informed the target that they had an order for his removal. At that time, the target stated that he was not going anywhere, and Officer (b)(6) handcuffed him because he was under arrest.

Officer (b)(6) testified that after he arrested the target, they asked everyone at the table for identification, which was provided. Nobody refused to provide identification. They then contacted the Law Enforcement Support Center via telephone, which provides immigration history over the phone. The officers gave them names, dates and countries of birth, so the Law Enforcement Support Center could do a name search. For the individuals that the Law Enforcement Support Center could not find in their system, the officers directly asked those individuals if they had immigration status. Respondent was one of those individuals. The officers asked Respondent which country he was a citizen of and he stated Mexico. Then they asked Respondent if he had any documentation which would allow him to stay in the United States and he replied "no." They asked if Respondent had any medical conditions and Officer (b)(6) believes Respondent said "no." Respondent did not refuse to speak to Officer (b)(6) or ask to leave at any point. Once Respondent was identified as one of the individuals who had no immigration status, they moved on to the next individual. Contacting Law Enforcement Support Center took about 20 minutes. From the time they entered the house to the time they exited was approximately two hours.

Officer (b)(6) testified that when they went to the target's address they had the intention of arresting only the target. If they encountered other people with prior immigration history or admissions of alienage, it was his duty to arrest them if he had probable cause.

(b)(6),(b)(7)(C)

4

P.S

01:1566315865

JAN-26-2010 03:55P FROM:

ICE.2014-FOIA-01578.003260

On redirect, Officer (b)(6), (b)(7)(C) stated that he knew he needed valid consent and the interactions of that morning comported with his training. He stated that while they questioned the individuals, their weapons remained holstered, were never drawn, and his badge was displayed. He believes that he filled out all the Form I-213s, and he physically handcuffed the target.

2. Cross-examination

On cross-examination, Officer (b)(6) testified that before coming to testify he reviewed the Form-I-213s, Record of Deportable/Inadmissible Alien, for Respondent (b)(6), (b)(7)(C) and their target that day, and an internal system printout. In addition he met once with the DHS Assistant District Counsel to discuss the case, but he did not discuss it with the other officers.

Officer (b)(6) testified that his ICE badge on the tactical vest he wore the day of the arrests was removable, just pinned on with a butterfly pin. Officer (b)(6) believes the other officers involved in Respondent's arrest can speak Spanish, but he does not know to what extent.

On the day of Respondent's arrest, (b)(6), (b)(7)(C) was the first individual to leave the house and the garage door was still open when he went towards his vehicle. The officers did not show (b)(6), (b)(7)(C) any documents, or arrest or search warrants, and there were no exigent circumstances which would allow them to enter the house. It was less than two minutes from the time they approached (b)(6), (b)(7)(C) until they entered the garage. (b)(6), (b)(7)(C) only stated "yes" to Officer (b)(6), (b)(7)(C) request to enter the house, and they followed (b)(6), (b)(7)(C) as he walked through the garage. (b)(6), (b)(7)(C) went in the home first. The officers followed him through the garage to the kitchen, and Officer (b)(6) took a left and knocked on doors downstairs. After their target came out of the room and was seated in the dining room, Officer (b)(6), (b)(7)(C) went up the stairs and continued to knock on doors.

Officer (b)(6) testified that before alienage was established, those individuals sitting at the table would have been entitled to leave. He stated that if they tried to leave, the officers would not object. When asked if the officers would have done nothing if an individual had gotten up and walked out the door, Officer (b)(6), (b)(7)(C) stated that they would attempt to have them remain there. He testified that they would ask them to please stay and sit down, but nothing else. He stated that besides the target, if the other individuals attempted to leave the house, that was their free will and he would not have been able to stop them. Officer (b)(6), (b)(7)(C) stated that in this type of situation he has never had anybody just walk out of the building. He stated that at this point, the officers' weapons were clearly displayed. Later, more officers arrived and there were eventually a total of seven officers at the house. All the officers had the same authority and no supervisor arrived.

(b)(6), (b)(7)(C)

Officer (b)(6) testified that he prepared the Form-I-213s and I-831s the morning of Respondent's arrest, after he returned to his office. Seven or eight people were arrested from the target's house on that day. Officer (b)(6) used the same first paragraph in all the I-213s he prepared for those arrested that day because they were all found the same way. In that first paragraph, where he stated that he encountered (b)(6), (b)(7)(C) twice, that is a typo. When asked on cross-examination if anything struck him as unusual about the aliens detained, Officer (b)(6) stated that the target told them that he was not going anywhere after they arrested him. When asked if there was anything else besides the target that struck him as unusual about any of the individuals in the house, Officer (b)(6) stated "no." When asked if there were any individuals with medical problems, Officer (b)(6) stated that there were some that were on medication, which was taken with them down to the station. After a short recess, he was again asked if there were any medical or health problems that he recalled, and Officer (b)(6) replied that there may have been a pregnant female in the house.

Officer (b)(6) was assigned to the case that morning, between 2 a.m. to 4 a.m. When assigned to this case, he was given a copy of the field operations worksheet, a copy of the target's removal order, and the administrative warrant. He read the field operations worksheet before he went in, which lists prior deportees who are family members that might be with the target. It would have been his assumption that those people were previously deported.

The IJ asked Officer (b)(6) if he had asked (b)(6), (b)(7)(C) for any identification after he identified himself to (b)(6), (b)(7)(C) and he replied that he did not. The IJ then asked how Officer (b)(6) knew who (b)(6), (b)(7)(C) was, or whether he had any authority to give consent to enter the house. Officer (b)(6) replied that (b)(6), (b)(7)(C) exited the house so he knew (b)(6), (b)(7)(C) had to somehow be attached to the house. (b)(6), (b)(7)(C) had authority to be in the house and if he had no authority to let Officer (b)(6) in, he had the right to tell Officer (b)(6) that. Officer (b)(6) did not ask (b)(6), (b)(7)(C) for identification at that time because he had a photo of the target, and (b)(6), (b)(7)(C) did not match the photo. He knew (b)(6), (b)(7)(C) was not the target so he was going to use (b)(6), (b)(7)(C) hopefully to get in the house.

Officer (b)(6) testified that he is sure that he read the field operations worksheet which made him aware that there were members of the target's family who had immigration cases. The IJ asked if he would have had reason to suspect that the individual they encountered outside the house, (b)(6), (b)(7)(C) was one of those who was a prior deportee. Officer (b)(6) replied possibly, there were quite a few male individuals listed as prior deportees, then he stated that it could have been, and then replied "yes." The IJ then asked if there was some reason why he would not ask that individual for identification, and Officer (b)(6) replied that their intentions that day were specifically for the target. If he encountered one of the prior deportees he would have taken action then, but he knew walking up to (b)(6), (b)(7)(C) that he was not his target

(b)(6), (b)(7)(C)

because (b)(6),(b)(7)(C) was a totally different age from the target, and he was going to use him as a way to get into the house. The IJ asked if the first time he asked for identification from (b)(6),(b)(7)(C) was in the dining room, and he replied "yes." Officer (b)(6),(b)(7)(C) testified that he did not identify (b)(6),(b)(7)(C) until he got into the dining room, and he did not know who (b)(6),(b)(7)(C) was before that, but because (b)(6),(b)(7)(C) came from the house he assumed he was someone from the house.

B. Testimony of Respondent and (b)(6),(b)(7)(C) and affidavits

On April 23, 2009, the Court heard testimony from Respondent and his father-in-law (b)(6),(b)(7)(C). The Court found in its August 19, 2009 decision that both Respondent and (b)(6),(b)(7)(C) testified in accord with their affidavits and also in accord with each other's testimony, with the exception of whether Respondent was handcuffed when he first came down to the dining room. Respondent and (b)(6),(b)(7)(C) invoked their Fifth Amendment right against self-incrimination with regard to questions concerning nationality. For ease of exposition, a summary of their affidavits have been included below.

Respondent submitted a sworn affidavit stating that he lived with his wife and other family members in his father-in-law's two-story house. Exhibit 7. On the morning of July 25, 2008, he was asleep in his bed on the second floor of that house. *Id.* He woke up when a man came through his bedroom door with a flashlight and a pistol pointed at him and told Respondent to get up. *Id.* Respondent was told to go downstairs and sit with the rest of the occupants at the dining room table, which he did. *Id.* As he was entering the dining room, Respondent saw an ICE agent called "Gus" shoving his brother-in-law, and later that same agent yelled at Respondent's pregnant wife. *Id.* "Gus" began to ask the occupants questions and when Respondent's brother-in-law said they should not answer questions without an attorney, "Gus" yanked the brother-in-law out of his chair where he was handcuffed and shoved him against the wall, calling him a big-mouth. *Id.* After more questioning, "Gus" read them their rights very fast so they could not understand them, and the occupants were taken to San Francisco for further questioning. *Id.* At no time was a warrant presented to Respondent or anyone else and no one gave ICE permission to enter the house. *Id.* At no time during the above mentioned events did Respondent believe that he was free to leave or not answer questions asked by ICE. *Id.* Rather, he feared for his and his family's safety. *Id.*

Respondent also submitted an affidavit from his father-in-law (b)(6),(b)(7)(C) stating that on or about July 25, 2008, while (b)(6),(b)(7)(C) was exiting his garage with his toolbox and in his driveway, armed ICE officers who identified themselves as police demanded to see an identity document and he complied. Exhibit 8. These officers then shoved (b)(6),(b)(7)(C) back into the garage without his consent and against his will. *Id.* An officer then asked (b)(6),(b)(7)(C) if the interior door, which was closed, was an entrance to the

(b)(6),(b)(7)(C)

house, and he replied that it was. *Id.* The officers then pushed him toward the interior door, an officer opened the door, and (b)(6),(b)(7)(C) was pushed through the door. The officer then entered the house without his permission or a warrant. *Id.* Respondent was living in (b)(6),(b)(7)(C) house and was inside the house that morning. *Id.* One of the ICE agents ordered (b)(6),(b)(7)(C) to call upstairs for anyone else in the house, and he followed the order and called for his wife because he felt he had no choice. *Id.* All the occupants of the house were ordered to sit at the dining room table. *Id.* Once inside, these officers identified themselves as ICE and asked the occupants for identity documents and questioned them regarding their alienage. *Id.* Only after they were questioned were they read their rights. *Id.* At no time was a warrant presented to him or anyone else for the search of the house or for the arrest of anyone. *Id.* At no time during these events did he believe that he was free to leave or not answer questions, and at all times he feared for his safety and the safety of his family. *Id.*

III. Discussion

Removal proceedings are civil in nature and therefore need not strictly follow conventional rules of evidence. *Matter of Barenas*, 19 I&N Dec. 609, 611 (BIA 1988). Evidence is admissible if it is probative and its use is fundamentally fair. *Id.*; *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 505 (BIA 1980). An Immigration Judge may receive into evidence "any oral or written statement which is material and relevant to any issue in the case previously made by the respondent or any other person during any investigation, examination, hearing, or trial." 8 C.F.R. § 1240.7. However, in removal proceedings, a respondent has the right to a reasonable opportunity to examine and object to the evidence against him, to present evidence on his own behalf, and to cross-examine witnesses presented by the Government. 8 C.F.R. § 1240.10(a)(4).

Because of the civil nature of removal proceedings, a respondent cannot generally suppress evidence asserted to be procured in violation of the Fourth Amendment. *INS v. Lopez-Mendoza*, 468 U.S. 1032 (1984) (finding the Fourth Amendment exclusionary rule inapplicable to deportation proceedings). However, the Supreme Court left open the possibility that the exclusionary rule might still apply in cases involving "egregious violations of Fourth Amendment or other liberties that might transgress notions of fundamental fairness and undermine the probative value of the evidence obtained." *Id.* at 1050-51.

In applying this exception, the Ninth Circuit has developed a two part test to determine when evidence should be suppressed in an immigration proceeding. *Orhorhaghe v. INS*, 38 F.3d 488, 493 (9th Cir. 1994). The Court must first determine whether the Government violated the Fourth Amendment. *Id.* If it did, then the Court must determine whether the agents committed the violations deliberately or by conduct a reasonable officer should have known would violate the Constitution. *Id.* The Ninth Circuit finds the evidence excludable even if the probative value

(b)(6),(b)(7)(C)

of the evidence acquired has not been undermined. See *Gonzalez-Rivera v. INS*, 22 F.3d 1441, 1451-52 (9th Cir. 1994); *Cervantes-Cuevas v. INS*, 797 F.2d 707, 710 (9th Cir. 1985). Once both steps are met, evidence that is the fruit of the unlawful Fourth Amendment violation is also suppressible. *United States v. Crews*, 445 U.S. 463, 470 (1980); *Wong Sun v. United States*, 371 U.S. 471, 484 (1963).

1. Fourth Amendment Violation

The Fourth Amendment protects "the right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures." U.S. CONST. amend. IV. An immigration officer may stop and question a person in order to investigate whether he is an alien lawfully present in the United States, although this power is limited by the Fourth's prohibition against unreasonable searches and seizures. See INA § 287(a)(1); see also 8 C.F.R. § 287.3; *INS v. Delgado*, 466 U.S. 210 (1984); *Orhorhaghe v. INS*, 38 F.3d 488, 497 (9th Cir. 1994).

1. Searches

a. Consent

A search conducted with the consent of a person who is not in custody is valid if the consent is voluntarily given, without any duress or coercion, express or implied. See *Schneekloth v. Bustamonte*, 412 U.S. 218 (1973). "It is the basic principle of Fourth Amendment law that searches and seizures inside a home without a warrant are presumptively unreasonable." *Payton v. New York*, 445 U.S. 573, 586 (1980). The presumption of unconstitutionality that accompanies "the [warrantless] entry into a home to conduct a search or make an arrest" may be overcome only by showing "consent or exigent circumstances." *Steagald v. United States*, 451 U.S. 204, 211 (1981). "The Government has the burden of showing that such consent was voluntary, based on the totality of all the surrounding circumstances." See *id.* at 222-23.

In a recent case regarding the suppression of evidence in removal proceedings, the Ninth Circuit found that there was no consent for Government agents to enter the respondent's home when they pushed the door open and continued to talk to her. *Lopez-Rodriguez v. Mukasey*, 536 F.3d 1012, 1016 (9th Cir. 2008). The "government may not show consent to enter from the defendant's failure to object to the entry." *Id.* at 1017. The Ninth Circuit allows for an inference of consent to enter a residence only in very limited circumstances such as where the officers verbally request permission to enter the home and the occupants actions suggest assent or where prior collaborative interactions between the suspect and the officers make the inference of consent unequivocal. *Id.*

(b)(6),(b)(7)(C)

The Court has carefully considered Officer (b)(6), (b)(7)(C) Respondent's and (b)(6), (b)(7)(C) testimony, and now has the difficult task of determining which contradicting narratives to credit. The Court finds that Officer (b)(6), (b)(7)(C) testimony conflicts not only with Respondent's and (b)(6), (b)(7)(C) testimony and affidavits, but also with the Forms I-213 that he prepared. Officer (b)(6), (b)(7)(C) testified repeatedly that when he initially identified himself to (b)(6), (b)(7)(C) he did not ask (b)(6), (b)(7)(C) for any identification, and he did not know who (b)(6), (b)(7)(C) was until he asked him for identification in the dining room. However, Officer (b)(6), (b)(7)(C) narrative in the Form I-213s, marked for identification as Exhibits 11 and 12, states that in their initial encounter he asked (b)(6), (b)(7)(C) his name, which (b)(6), (b)(7)(C) provided. The Court finds Officer (b)(6), (b)(7)(C) testimony unreliable because this inconsistency demonstrates that he cannot recall important facts regarding the initial encounter.

The Court had other concerns regarding Officer (b)(6), (b)(7)(C) testimony. For example, he initially testified that before alienage was established, if the individuals sitting at the dining room had tried to leave, the officers would not object. After further questioning, he stated that the Officers would attempt to have the individuals remain there by asking them to please stay and sit down, but nothing else. Officer (b)(6), (b)(7)(C) also testified that he had reason to suspect that (b)(6), (b)(7)(C) was one of those who was the target's family members listed as prior deportees. The Court doubts whether officers who had a list of prior deportees who are family members of the target, would gather the entire household from their bedrooms at 6 a.m., but then allow the individuals, who were not the target but whom they had reason to believe were prior deportees, to walk away after asking them to please stay and sit down, but nothing else. Nor does the Court believe that a reasonable person in that situation would feel that they were free to leave. See *INS v. Delgado*, 466 U.S. 210, 215 (1984) (quoting *United States v. Mendehall*, 446 U.S. 544, 554 (1980)) (An encounter with an officer may be transformed into a seizure "if, in view of all the circumstances surrounding the incident, a reasonable person would have believed that he was not free to leave."); 8 C.F.R. § 287.8(b)(1). Therefore, the Court questions Officer Lopez's perceptions of the events that occurred on the morning of July 25, 2008.

Furthermore, the Court doubts that a reasonable person would not attempt to identify (b)(6), (b)(7)(C) in their initial encounter to ensure valid consent. Here, when the U asked how Officer (b)(6), (b)(7)(C) knew who (b)(6), (b)(7)(C) was, or whether he had any authority to give consent to enter the house, Officer (b)(6), (b)(7)(C) replied that (b)(6), (b)(7)(C) exited the house so he knew (b)(6), (b)(7)(C) had to somehow be attached to the house. Officer (b)(6), (b)(7)(C) stated that (b)(6), (b)(7)(C) had authority to be in the house and if he had no authority to let Officer (b)(6), (b)(7)(C) in, he had the right to tell Officer (b)(6), (b)(7)(C) that. The Court finds it difficult to believe that a reasonable person would just assume someone leaving a house while carrying a toolbox had the authority to give consent to enter the house, and would not inquire if the individual lived in the house, or ask his name or for some form of identification.

(b)(6), (b)(7)(C)

The Court finds that these inconsistencies and concerns, coupled with Respondent's and (b)(6),(b)(7)(C) consistent testimony and affidavits, are sufficient grounds to discredit Officer (b)(6),(b)(7)(C) testimony. Based on the credible testimony of (b)(6),(b)(7)(C) that he did not give consent to enter the premises, the Court concludes that the ICE Deportation Officers did not have a search warrant or consent to enter (b)(6),(b)(7)(C) home, and no exigent circumstances existed to justify a warrantless entry. Therefore, the Court finds that their actions violated the Fourth Amendment, and thus their entry, and subsequent questioning and arrest of Respondent, were unlawful.

B. Egregious Violation

Once a Fourth Amendment violation is determined, the Court must determine if it is egregious. The Ninth Circuit has concluded that an immigration officer's conduct is egregious if evidence is "obtained by deliberate violations of the Fourth Amendment or by conduct a reasonable officer should know is in violation of the Constitution." *Orhorhaghe*, 38 F.3d at 501; *Gonzalez-Rivera v. INS*, 22 F.3d 1441, 1449 (9th Cir. 1994) (all bad faith violations of an individual's Fourth Amendment rights are sufficiently egregious to warrant application of exclusionary sanction).

In *Lopez-Rodriguez v. Mukasey*, 536 F.3d 1012 (9th Cir. 2008), the Ninth Circuit held that government officers' entry into a home without the occupant's consent was an egregious violation of the Fourth Amendment requiring suppression of the evidence obtained. "Reasonable officers would not have thought it lawful to push open the door to petitioners' home simply because she did not 'tell them to leave or that she did not want to talk to them.'" *Id.* at 1018. The Court based this determination on the fact that there has been well established case law regarding entry into a home without a warrant or consent. *Id.* Similarly, this Court finds that the ICE Deportation Officers' entry into (b)(6),(b)(7)(C) home by pushing him back into his garage and home, entering his home without consent, entering into Respondent's bedroom without consent, and the subsequent questioning and arrest of Respondent, constitute an egregious violation of the Constitution.

C. Conclusion

This Court has found that the ICE Deportation Officers did not have a search warrant or consent to enter (b)(6),(b)(7)(C) home, and no exigent circumstances existed to justify a warrantless entry. Because this Court finds that their actions constitute an egregious violation of the Fourth Amendment, any statements made by Respondent subsequent to the unlawful entry will be excluded from these proceedings. Specifically: (1) all oral and written statements taken from Respondent; (2) all papers, documents and other physical evidence taken from Respondent or obtained from a search of his person or his residence; and (3) all immigration forms completed

(b)(6),(b)(7)(C)

by immigration agents, including, but not limited to, Form I-213, Record of Deportable/Inadmissible Alien; and (4) all evidence that government agents acquired or discovered as a result of information gained from statements or other evidence obtained from Respondent or seized from his person or residence will not be admitted as evidence of Respondent's alienage. None of Respondent's statements while presenting testimony in support of his motion to suppress constitute independent admissions of his alienage. Nor has any independent evidence of Respondent's alienage been presented by the DHS to sustain its burden under section 291(e) of the Act.

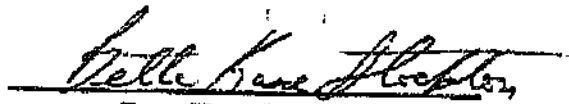
Since the DHS has not presented any evidence of Respondent's alienage, this Court declines to sustain the charge of inadmissibility and will terminate the present proceedings.

In light of the foregoing, the following order shall enter:

ORDER

IT IS HEREBY ORDERED that Respondent's motion to suppress be and hereby is **GRANTED**.

IT IS FURTHER ORDERED that Respondent's removal proceedings be and hereby are **TERMINATED**.


Bette Kane Stockton
Immigration Judge

JAN 25 2018

(b)(6),(b)(7)(C)

12

P.13

TO: 18663158585

JAN-25-2018 03:40P FROM:

**U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT
AND REMOVAL OPERATIONS**

Policy Number: ERO 11152.1 Enforcement and Removal Encounters

Issue Date: 7/29/2011

Effective Date: 7/29/2011

Review/Expiration Date: 7/29/2015

Superseded: None

Federal Enterprise Architecture Number:

1. **Purpose/Background.** This directive identifies requirements and provides general procedures for using the Enforcement Integrated Database (EID) as ERO's electronic system of records for administrative processing of foreign born nationals. EID is the U.S. Department of Homeland Security's (DHS) shared database repository for several DHS law enforcement and homeland security applications and is currently accessed through the Enforcement and Case Tracking System (b)(7)(E) application.
- 1.1 The purpose of the directive is to support the identification and arrest of individuals (both citizens and noncitizens) who commit violations of Federal criminal laws enforced by DHS.
2. **Policy.** All ERO law enforcement officers will document foreign born national encounters in the EID (e.g., using the (b)(7)(E) application).
3. **Definitions.**
 - 3.1. *Encounter:* the interview, screening, and determination of citizenship, nationality, and legal rights of any person in the United States at any time.
 - 3.2. *Interview:* a formal meeting in which a law enforcement officer questions a person believed to be an alien about citizenship, nationality, and the legal right to be in the United States.
 - 3.3. *Screening:* the process of verifying the identity of a person through biographic and or biometric identifiers.
 - 3.4. *Biographic identifiers:* personal information obtained from a person or third party (e.g., name, address, social security number, driver's license).
 - 3.5. *Biometric identifiers:* identity analysis of physical samples obtained from a person or provided by a third party (e.g., fingerprints).

- 3.6.** *Enforcement action:* a law enforcement activity (e.g., encounter, investigative detention, arrest, bond) taken by DHS to address criminal or administrative violations.

4. Responsibilities.

- 4.1.** The *Criminal Alien Division* is the Office of Primary Interest and is responsible for managing and overseeing compliance to this Directive.
- 4.2** All ERO law enforcement officers who encounter persons are responsible for documenting that encounter in the Enforcement Integrated Database (e.g., by using (b)(7)(E)).

5. Procedures.

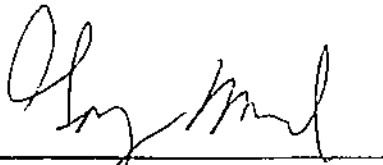
5.1. *Law enforcement officers:*

- 1) Document encounters in the Enforcement Integrated Database (e.g., by using (b)(7)(E)).
- 2) Create only one encounter based on the same enforcement action for the same person. Enter any crime information necessary to correctly indicate a foreign born national's criminal offense level (e.g., in (b)(7)(E) through the CRIME ENTRY SCREEN).
- 3) Input as an encounter subjects found through investigation to be derived or naturalized citizens.
- 4) If you determine that a person initially detained as a possible alien is a United States citizen, notate the record with your determination and state that no further action will be taken.
- 5) Do not enter information about U.S. citizens interviewed or screened unless being investigated or arrested for administrative or criminal immigration law violations.

6. Authorities/References.

- 6.1.** 6 U.S.C. §§ 101- 103, 111-113
- 6.2.** 8 U.S.C. § 1357
- 6.3.** 40 U.S.C. § 1315
- 6.4.** 8 C.F.R. § 287

- 6.5. Immigration and Enforcement Operational Records System of Records, 75 Fed. Reg. 23,276 (May 3, 2010), available at <http://edocket.access.gpo.gov/2010/2010-10286.htm>.
- 6.6. Privacy Impact Assessment for the Enforcement Integrated Database (EID) (January 14, 2010), available at <http://tinvtl.com/4l1x0ga>.
- 6.7. Memorandum from David J. Venturella on Fiscal Year 2010 Criminal Alien Program Goals to Field Office Directors and Deputy Field Office Directors (Jan. 5, 2010) available at [A-2010-01-05-fy2010cap-goals.pdf](#).
7. **Attachments.** None
8. **No Private Right Statement.** This Directive is an internal policy statement of ICE. It is not intended to, and does not create any rights, privileges, or benefits, substantive or procedural, enforceable by any party against the United States; its departments, agencies, or other entities; its officers or employees; contractors or any other person.



Gary Mead
Executive Associate Director
Enforcement and Removal Operations
U.S. Immigration and Customs Enforcement



**U.S. Immigration
and Customs
Enforcement**

JAN 10 2006

MEMORANDUM FOR: Field Office Directors

FROM: (b)(6),(b)(7)(C)
Acting Director (b)(6),(b)(7)(C)

SUBJECT: Update of Chapter 19, Section 11 (Liaison/Task Forces) to the
Detention and Deportation Officer's Field Manual (DDFM)

The DDFM is changed to reflect the update of Section 11, Chapter 19. Accordingly, the DDFM is changed as follows:

19.11 Liaison/Task Forces

I. POLICY

Officers conducting fugitive operations shall avail themselves of every opportunity to liaison with other law enforcement agencies and entities that can be of assistance in the pursuit of ICE fugitives. Where possible and staffing levels allow for it, National Fugitive Operations Program (NFOP) teams shall assign an officer to be a point of contact (POC) to meet regularly with their local Federal Joint Fugitive Task Force.

II. PROCEDURE

LIAISON

The successful apprehension of fugitives cannot be done without developing a good liaison network with both law enforcement agencies and non-law enforcement agencies. A successful fugitive operations team needs to begin their efforts by getting the word out to law enforcement agencies in their jurisdiction that ICE officers are in the field seeking fugitives from ICE.

Local law enforcement agencies are your most valuable resource and every effort needs to be made in establishing good working relationships with them. Local officers are the men and women who are more than likely the ones who have encountered your fugitive in the past or will be the ones that are able to assist you in locating someone in their neighborhoods.

Subject: Update of Chapter 19, Section 11 (Liaison/Task Forces) to the Detention and Deportation Officer's Field Manual (DDFM).

Page 2

To facilitate in the development of liaison, each fugitive team will initiate the Wanted Fugitive Poster Program (WFPP)¹ within its area of responsibility. With this program in place, you will be able to introduce yourself to the local authorities with wanted posters in hand. More often than not, officers walking into a local police department with a wanted poster will be greeted with open arms and has proven to be very effective with many fugitive teams.

This system will assist you in introducing yourself to local police. You will want to keep in mind that some departments are so large that you may want to get out and introduce yourself to the various shifts as many shifts do not communicate effectively with one another. Some departments just may not have the chance to share our information with all shifts.

An additional tool for use in liaison is the Fugitive Operations Fact Sheet available through HQFOU. This sheet provides information on the background of the NFOP as well as identifies training our officers undergo, explains our Most Wanted program and provides insight on the availability of the NCIC Immigration Violator File. Field Offices may request electronic access to the Fact Sheet to print and distribute locally; if required, HQFOU can also have it translated into various foreign languages as necessary.

Depending on the different departments, you may want to introduce yourself to the detective division, photo and identification units, narcotics units, vice units, gang units, etc... Again, some departments are much larger than others and you may want to keep that in mind.

Officers should also contact state fingerprint labs. Each state is different but most have some sort of lab or center that is a clearinghouse for fingerprint record keeping. Many already clear their print cards through the FBI's NCIC database. Perhaps some sort of mechanism for running ICE fugitive print cards through their state's database could be established. In that event, HQFOU should be notified in order to initiate the process.

Another vital resource is local courts and probation/parole departments. They often interact with people attempting to evade detection by ICE. Establishing contacts and developing a good working relationship with these various departments can go a long way toward the apprehension of our fugitives.

Local jails, correctional facilities and sometimes even the Federal Bureau of Prisons are valuable resources that should not be overlooked when tracking a fugitive. Information that can be gleaned from these facilities includes but is not limited to fugitive and family addresses, work information, visitor logs and updated photographs.

Non-law enforcement agencies such as Departments of Motor Vehicles, Driver's License Agencies, banks, credit unions, and insurance organizations are prime sources of

¹ Officers are reminded that only the ICE Most Wanted (Top Ten) Program Poster (Chapter 19.9) is allowed. In other words do not create a regional 'Top Ten' list but use posters as part of the investigative and liaison process.

Subject: Update of Chapter 19, Section 11 (Liaison/Task Forces) to the Detention and Deportation Officer's Field Manual (DDFM).

Page 3

information not normally found anywhere else. Telephone and gas, power, and light companies hold a wealth of information on addresses. For instance, you have developed information that your target is living at a particular location. You can take that address to the phone or gas company and see who is listed as the responsible billing parties. Some employers who hire illegal aliens will sign affidavits of financial responsibility or even be listed as the billing party. Such information can open up an entirely new line of investigation.

A successful fugitive team has to seek out these different non-law enforcement agencies in their areas. Many agencies have their own law enforcement or security departments who can provide assistance in obtaining information from a particular agency. One tactic might be to report the state issued driver's license or identification card number to a state's department of motor vehicles with the information that the subject is wanted or has been deported and is not to return to the United States without permission.

Non-law enforcement agencies need to be approached in a more sensitive manner than law enforcement agencies. However, past experience has shown that officers, who fully explain their mission, find that cooperation increases ten fold.

In the event such information is necessary, yet unavailable due to a company or state agency policies, officers should invoke their administrative subpoena powers to overcome such hurdles.

The following is a list of agencies with a brief description of how the particular agency may be of assistance with this program in a FOT's jurisdiction. It is important that, practical, personal liaison be established with "key" personnel assigned to each agency where information is sought, along with a brief explanation of the ICE's mission. One of the most important points to stress is that these fugitives have already completed the hearing process and have outstanding Warrants of Deportation/Removal, which means their removal can be expeditiously accomplished subsequent to apprehension. This will increase the likelihood of other agencies proactive participation and assistance in attempts to locate wanted fugitives. It should also be explained that these cases have been entered into NCIC, if applicable.

When a fugitive is apprehended, it is important to contact the personnel that you previously made contact with in order to make them aware of the apprehension. This can be easily accomplished by listing these agency personnel as "leads" on form G-176 during the course of your fugitive investigation. This will save these agencies unnecessary time and effort attempting to locate the fugitive for ICE and will enhance the rapport between agencies.

Oftentimes, when conducting liaison with personnel from other law enforcement agencies, the question is asked by what authority they can apprehend ICE fugitives. It is recommended that ICE personnel instruct them to consult with their own legal department regarding this matter. Advise them that ICE is only seeking information that they may be able to provide as to the whereabouts of wanted ICE fugitives.

FEDERAL AGENCIES

U.S. Department of Homeland Security

A partial list of these agencies and bureaus includes:

- U.S. Immigration and Customs Enforcement, Office of Investigations
- Transportation Security Administration
- Federal Air Marshals
- Office of Air and Marine Interdiction (CBP)
- Federal Protective Service²
- Bureau of Customs and Border Protection (Inspections)
- U.S. Border Patrol
- United States Secret Service
- Bureau of Citizenship and Immigration Services

U.S. Passport Office/Bureau of Diplomatic Security³

Special Agents with the Bureau of Diplomatic Security have access to their own internal database, which contains information on applications filed for visas to enter the United States. Detailed information can be obtained from the application and interview through this system, in addition to possibly serving as evidence that the subject has already departed the United States. HQFOU has an agreement with the Department of State to match the information in DACS, regarding our fugitives, to their system. This is completed by the Fugitive Operations Support Center located in Burlington, VT.

Drug Enforcement Administration (DEA)

A large number of our fugitive population have a criminal history. A large portion of those have a history with illicit drugs. Therefore, it is possible that DEA may have information on their whereabouts. DEA may also have ongoing investigations relating to these individuals, which may prove to be of interest in the area of officer safety. Additionally, these individuals may be acting as Confidential Informants for DEA. *Although ICE is sometimes aware of this information, this is not always the case.*

² HQ Fugitive Operations Unit (HQFOU) is currently working with FPS. The "Most Wanted" poster is distributed in their daily newsletter

³ Should problems arise, contact HQFOU.

Subject: Update of Chapter 19, Section 11 (Liaison/Task Forces) to the Detention and Deportation Officer's Field Manual (DDFM).

Page 5

Internal Revenue Service (IRS)

The amount of information that the IRS can provide is very limited due to disclosure constraints. Virtually no information can be provided without a court order. However, IRS receives many anonymous calls from people who lodge complaints about aliens not paying taxes, which may prove to be beneficial.

Alcohol, Tobacco & Firearms (ATF)

Because many of the fugitives wanted by ICE have been arrested and/or convicted of a firearm offense, it is possible that the local ATF office may have information on them. If you are attempting to locate an individual who is known or believed to carry firearms, ATF may provide an agent to assist with the apprehension, depending on the rapport that you have established with the local office. Additionally, if an ATF agent is working with you when an apprehension is made of an alien who has a firearm at the time of the arrest, ATF may want to take custody of the alien and prosecute him/her criminally. In those instances, you will need to lodge an ICE detainer () with the arresting agent or the U.S. Marshals Service.

U.S. Marshals Service

Many of the local U.S. Marshals offices have established Fugitive Units. If you receive information that a wanted ICE fugitive was on federal parole or probation and has violated that status, the U.S. Marshals may also be attempting to locate that individual. They may have useful information for ICE or ICE may have information useful to their case/operation.

Federal Bureau of Investigation (FBI)

Inquiries should be made with the local FBI Foreign Counter Intelligence (FCI) and Drug Units⁴. The FCI Unit may be interested in aliens from hostile countries and may have information regarding them. The Drug Unit may have information on aliens involved in drug trafficking. Also, many FBI agents are assigned to various local, state and county task forces, and information/wanted posters should be provided to them. It is also important to contact the FBI regarding these cases as the FBI has a large network of confidential informants, some of which may be the targets of your investigation. Contact should be made with the controlling FBI agent and local ICE management should also be apprised of the situation.

⁴ ICE Most Wanted information will be sent from HQFOU by coordinating with ICE's National Security Unit (NSU).

Department of Labor (DOL)

The DOL may be a useful point of contact as the fugitive may be receiving some form of workman's compensation, possibly as the result of an industrial accident. Also, the fugitive may be in the process of applying for certain benefits from the DOL.⁵

Social Security Administration (SSA)

The Social Security Administration can be an outstanding source of information in providing employer information relating to wanted fugitives. *Section 290 of the Immigration and Nationality Act⁶ requires that the SSA provide employer information to ICE when requested.⁷*

STATE/OTHER AGENCIES/ENTITIES

Bureau of Special Investigations (BSI)

Many states may have agencies such as these. In some states, the BSI provides information relating to individuals who are collecting state benefits such as welfare, unemployment, food stamps, etc. The BSI may provide personnel to assist by sending a "call-in" letter to the wanted fugitive in order to assist ICE in effecting their arrest.

Financial/Insurance Fraud Associations

Some states have agencies that combat financial and insurance fraud. Many times these may be private agencies funded by state government. It is extremely important to initiate liaison with local personnel from these agencies, as they tend to have extensive financial and insurance related databases. You should remember that, quite often, their investigations involve aliens, and they may be in need of your assistance as much as ICE needs them.

State Police

Wanted posters should be provided to State Police Departments. They should be provided to both the uniformed and non-uniformed troopers (detectives). You should also find out if State Police officers are assigned to local drug task forces and provide them with information/wanted posters on ICE fugitives. When you provide copies of the wanted posters to the State Police, you should also include any known vehicles that the fugitives are known to use. This will assist the State Police in determining the identity of an individual or individuals in the vehicle.

⁵ HQFOU is working with DOL to coordinate the exchange of information. HQFOU will send any information it receives to the field as 'Hot Leads' or update DACS.

⁶ Section 290(b) can be used for any government agency, not just the SSA.

⁷ HQFOU is working with SSA to coordinate the exchange of information. HQFOU will send any information it receives to the field as 'Hot Leads' or update DACS.

Correctional Institutions

Wanted posters should be placed in all correctional facilities, including ICE Service Processing Centers, within your respective area of responsibility. The most effective area for placement would be the inmate processing area. It is particularly important that all aliases be noted on the wanted poster. Officers should routinely check with those correctional facilities within their respective area of responsibility and if possible, have the facility's databases queried.

Department of Motor Vehicles (DMV)

In addition to information that DMVs can provide concerning aliens, they also can be another force multiplier in looking for a fugitive. Should the target not have a driver's license for his current residence⁸, providing a wanted poster to driver's license examiners or their investigative units could result in an easy apprehension.

Local Police Departments

Local police departments are probably the most useful of all agencies. You should always communicate with the detective units, however you may also want to communicate with the uniformed officers as well. When communicating with police departments, you must ensure that personnel on all shifts are aware of the information. The local police are more likely to come into contact with fugitives than any other agency and they have proven to be a necessary source of information. You should also find out if the department has its own drug unit and housing unit.⁹ Many fugitives are found residing in public subsidized housing and the housing police units can get information discreetly through local contacts. In large metropolitan areas, there may be transit police departments. Wanted posters should be given to these departments, especially if the fugitive does not possess a valid driver's license.

Probation Offices

When dealing with probation officers, you must remember that, unfortunately, some officers are sympathetic to their clients and may not provide you with as much information as you may like. In extreme circumstances, they may even contact the fugitive and inform them of ICE's interest. Experienced ICE officers will usually know the names and telephone numbers of reliable probation officers in the various district courts within their jurisdiction. Posters should only be placed with probation officers that you are sure will not alert the target to our interest.

Local banks

Most banks have a Director of Security. Liaison should be initiated with these officials, as they are often helpful in providing account information. Security officers frequently meet at

⁸ Some power companies and agencies that provide financial assistance require proof of a local address.

⁹ HQFOU is working with Housing and Urban Development to access their databases to cross check against our fugitive lists. Any information gleaned from their databases will be forwarded to the field for action.

Subject: Update of Chapter 19, Section 11 (Liaison/Task Forces) to the Detention and Deportation Officer's Field Manual (DDFM).

Page 8

regularly scheduled intelligence conferences to discuss problems and concerns. Usually, ICE officers are welcome to attend these meetings and information/wanted posters can be circulated among the attendees.

Airline Security Divisions

Liaison should be established with airline security officials of airlines that have direct flights to countries that fugitives are likely to travel to. Wanted posters may be given to these officials, but these officials should be briefed of the restrictions and prohibitions contained in Section 215 of the Immigration and Nationality Act regarding the departure from the United States of certain classes of aliens.

Confidential Informants

The use of wanted posters with confidential informants (CIs) can reap enormous results, however, a certain amount of caution must be used when doing so. Prior to allowing CIs to view ICE wanted posters, you must be extremely confident in their ability and reliability. These may be CIs from ICE or other agencies. In any event, you should be thoroughly familiar with all ICE policies and regulations regarding their use. Once again, CIs should not be given a copy of the poster or if given one, warned to keep them in a secure location. See [REDACTED] – *Confidential Informants*.

TASK FORCES

FODs need to fully support the operation of the NFOP teams to ensure that ICE is ready and prepared to respond to any event involving an ICE fugitive. The vast number of outstanding warrants of removal requires that some positive action be taken immediately.

Many U.S. Marshals Offices already have Joint Fugitive Task Forces (JFTF) that are full time teams of officers from most of the agencies within the jurisdiction of a particular Marshals Office. NFOP teams should assign an officer as a POC to meet regularly with the Marshals JFTF.

Where they do not currently exist, and one is determined necessary, the organizing of an ICE/NFOP sponsored Joint Fugitive Task Force is the responsibility of the NFOP team. The Supervisory Deportation Officer/Supervisory Detention & Deportation Officer is responsible for establishing liaison with the local U.S. Marshals Service office and other local participating agencies in establishing a JFTF. If instituting a local JFTF with the U.S. Marshals, HQFOU and Headquarters, U.S. Marshals Service must approve a proposed *Memorandum of Understanding* creating the task force.

Two other task forces that should be contacted are the Organized Crime Drug Enforcement Task Forces (OCDETF) and the Joint Terrorism Task Forces (JTTF). In many locations

Subject: Update of Chapter 19, Section 11 (Liaison/Task Forces) to the Detention and Deportation Officer's Field Manual (DDFM).

Page 9

ICE will have an officer already assigned to OCDETF or JTTF who can help in getting information on your fugitives to their respective task force.

Although NFOP teams should restrict their participation to *fugitive* task forces, of which foreign-born individuals make up a large part of the target population, with HQFOU approval they may also establish strong ties with other task forces such as:

- Violent Gang Task Forces
- Local Narcotics Task Forces
- Safe Streets Task Forces

Additionally, should a local agency approach our NFOP teams asking for task force participation, or for help with one of their operations, they should assist to the fullest extent possible. Doing so imbeds in the minds of these officers that we are full partners in the war against crime. However, FODs are reminded that NFOP personnel are to work exclusively on matters relating to the mission of the NFOP. Any NFOP participation with a task force, to include the Marshals JFTF, the OCDETF and JTTF task forces, needs to be addressed by HQFOU with concurrence sought well in advance of any commitments for participation. The following guidelines will be followed in determining participation in task forces headed by other agencies:

- Name of the task force.
- Are targets of the task force foreign born or otherwise foreign nationals?
- Will the NFOP be able to target our fugitives wanted on administrative warrants?
- What other agencies are involved?
- Under what authorities will NFOP officers be operating? (Must identify level of authority granted under specific state statute if using the "peace officer" status granted under state law. However, do not rely solely on this statute to identify the authority.)
- What is the overall mission of the task force?
- What is the length of time to be dedicated to the task force if it isn't a permanent, full-time operation?

An application for task force participation is available via the intranet at the FUGOPS web page (<https://dhsonline.dhs.gov/portal/jhtml/community/jhtml?index=41&community=BTS&id=2010980007>).

In the event that participation is approved, it will be the FODs responsibility to ensure that reports on the task force accomplishments are regularly reported. That reporting period will be determined by the length of the operation or task force and should, at a minimum, identify those arrests that are of primary ICE interest. For example, if the task force apprehends 100 fugitives over a period of a month, identify how many were ICE fugitives and how many were foreign-born fugitives that we placed detainers on. Include a breakdown on the criminal violations of all apprehensions, to include those without primary ICE interest.

Subject: Update of Chapter 19, Section 11 (Liaison/Task Forces) to the Detention and Deportation Officer's Field Manual (DDFM).
Page 10

The time may come when you will need to ask for help from one of these agencies. They will be less inclined to assist you if you have failed to respond to their requests in the past. As often as possible, HQFOU will work with the local authorities to make this participation happen.

Law enforcement agencies all tend to have a long corporate memory when it comes to agencies or people who failed to help them or live up to promises made. They also tend to remember those issues regarding officers who overstep their authorities.

Comments or suggestions concerning this chapter can be forwarded to the Chief, Fugitive Operations Branch via cc: Mail at: FUGOPS which can be found in the directory as HQDRO FUGOPS.

Each field office should be prepared to have adequate detention space available for the arrests that are brought in. One suggestion on eliminating long detention stays would be to attempt to obtain a travel document even before the arrest is made. It is a difficult thing to do but it is something to consider.

Aliens who have violated Title 8 United States Code 1253 should be presented to the local United States Attorney for prosecution.²

Disposition of Cases not Resulting in a Fugitive Apprehension

It is anticipated that there will be cases where after reasonable measures have been taken, the location of the fugitive cannot be ascertained. In such circumstances field officers are to update the case in TECS as well as in DACS. Supervisory concurrence will be required documenting that all reasonable investigative checks/leads have been pursued prior to removing an assigned case from the active fugitive docket. To assist in follow-up investigations, field notes as well as database inquiries gathered during investigation should be included in the fugitive's target folder.

The Law Enforcement Support Center (LESC) has been tasked to assist ICE fugitive operations by entering all fugitive cases into NCIC. Investigations that do not lead to the location of the fugitive are to be properly recorded and forwarded to the LESC for entry into the NCIC System. If the fugitive is located outside of the file control office's area of responsibility, the file should be properly forwarded to the office nearest the location of the fugitive. A sample memorandum forwarding a case to another office is contained in Appendix 19.4.

Prior to forwarding the case to the LESC, officers are to ensure that the information contained in the alien's file meets the requirements for entry into the NCIC database.³ Officers are to create and maintain a target folder with pertinent information on all absconder cases that have been forwarded to the LESC. The target folder will be used for subsequent investigations, operations, forwarding to other Field Offices or arrest operations.

III. CASE PREPARATION

The following should be the minimum actions taken prior to conducting a fugitive operation:

- Conduct a complete review of the subject's file. Officers should conduct a review of other pertinent documents to gather investigative leads. This includes, but is not limited to:
 - Form I-156(s), if sent;

² See 19.8 - Prosecutions.

³ See Appendix 19-4.

~~FOR OFFICIAL USE ONLY~~
~~LAW ENFORCEMENT SENSITIVE~~

- Current address;
 - Current criminal history printout;
 - All available records, including computerized state and federal criminal records;
 - Driver history and DMV-registered vehicles, if applicable; and,
 - Any pending forms of relief (judicial stay orders) or conditions (medical, etc.) that would preclude the alien from removal.
- Create a target folder as outlined in Attachment-19-3. (A-files shall not be taken into the field and will be forwarded to the LESC, when appropriate, after the target folder is created).

RECORD CHECKS

When conducting record checks with any agency, officers should keep in mind the principles contained in ~~Chapter 19.4~~.

U.S. Postal Service:

Initially, contact should be made with the local Post Office personnel to determine if the fugitive is receiving mail at any known address. The Postal Service has a form *Information Needed for Service of Legal Process* (~~Appendix A~~) that you will need to complete in order to retrieve information.

Postal checks should be conducted prior to 8:00AM so that you can speak with the appropriate letter carrier prior to the commencement of their route. You should initially speak with the Postmaster and explain what you are doing. You should then ask the Postmaster to allow you to speak with the letter carrier who handles that area. When speaking to the letter carrier, a photograph of the fugitive should be made available. You should also inquire about any change of address or forwarding requests. If the last known address of the fugitive is a P.O. Box, you should check the "application form" the fugitive filled out to get the box, as applicants are required to list their actual address on the application. This may provide another possible address for the fugitive.

Another good source of information is the Postal Inspectors, the enforcement branch of the Postal Service. They can provide mail covers at a specific location; track the mail that is being received at a particular residence and the mail coming out of the residence. Contact information for Postal Inspectors can be found in the SAFM, ~~Appendix B~~.

Local Police Departments:

If you believe you have identified a city in your jurisdiction where a fugitive may reside, you should immediately make personal contact with the local Police Department, preferably with someone in the detective division. You should explain the Warrant of Deportation/Removal to them and leave copies of the Wanted Poster. Depending on the existing liaison with that department, you may want to personally deliver the Wanted Poster to detectives assigned to every shift, as well as supervisory uniformed officers from every shift. Be sure to emphasize if the fugitive is listed in NCIC and that you will respond immediately if they encounter/arrest the fugitive. Other than Confidential

~~FOR OFFICIAL USE ONLY~~
~~LAW ENFORCEMENT SENSITIVE~~

Informants, police departments will probably be your most valuable resource. Should your investigation lead to the conclusion that an alien has moved outside of your area of operations, then you should either check with that department or refer the case to the appropriate Field Office⁴.

Courts/Parole/Probation Departments:

If the fugitive is a criminal alien, contact should be made with any and all probation officers that had prior interaction with the fugitive. If the fugitive is currently on probation, you should be present at the probation office the next time the fugitive is required to report in order to effect the arrest. Contact should be made with the Clerk of the Court to review the court docket relating to the fugitive and develop any information in the court file.

Correctional Institutions:

If the fugitive is a criminal alien, personal contact should be made with personnel from all correctional facilities, including ICE Service Processing Centers, where the fugitive was previously detained. While at the facility you should review any visitation logs and inmate intake processing information that may provide additional leads. You should also obtain a photograph of the fugitive, if necessary, while at the facility.

Employment Checks:

Contact should be made with the fugitive's last known employer as the fugitive may still be working there. It is best to meet with the personnel manager when you conduct this visit. When speaking with the personnel manager you should emphasize that you wish to speak with only one employee and that you are not there to inspect/review any I-9 forms. If the fugitive is still employed there, request the personnel manager have the fugitive report to the personnel office, at which time you can effect the arrest in a confined area and prevent disruption of the work area and other personnel. If the fugitive is no longer employed there, you should ask to review the fugitive's employment application from the company files to look for any leads you may have yet to develop.

Banks/Credit/Insurance Organizations:

Banks and credit organizations can provide detailed financial information, however you will probably need to know the social security number of the fugitive, as most credit information is based on this. Supervisory personnel should develop and maintain liaison with high level officials from these organizations, as much of the information they provide must be kept confidential. Depending on the organization they may be able to provide detailed computer printouts. These printouts may indicate the date the fugitive conducted financial/credit transactions and with which companies. They may also list account information, child support payments, etc. Contact should then be made with

⁴ See this section entitled - "Referrals to Other Field Offices".

~~FOR OFFICIAL USE ONLY~~
~~LAW ENFORCEMENT SENSITIVE~~

the security directors of these companies who can provide information such as where monthly statements are mailed, which branches of banks transactions are conducted and other related items which may provide additional leads.

Schools:

In the event that the fugitive has children of school age, you should speak with the principal of the school that you believe the child may attend. This may provide you with additional addresses and telephone numbers. You should also show the photograph of the fugitive to the principal and ask if the fugitive picks up the child after school. If so, surveillance should be conducted at the school at the appropriate time. You should never arrest the fugitive inside the school and avoid if possible arresting on or near school grounds. Additionally, *absolutely never* approach a child of a fugitive or any other child/student in a school or on or near school grounds. Any benefits of doing so, if there are any, are immensely outweighed by the drawbacks.

Choicepoint:

This is an excellent investigative tool for fugitive operations. Choicepoint can provide information on property owned by the alien, addresses where the alien has lived at or where he has made applications to rent or lease property, businesses to which the target has made credit applications and used his social security number and other transactions where the target must provide information to conduct business or simply to live. It requires password access that must be granted by Choicepoint. The form requesting access may be sent in cc: Mail to AAIDRO. See ~~XXXXXX~~ for the access form.

Confidential Informants

One of the most effective tools used in the location of fugitives is the use of confidential informants. Because of the nature of dealing with confidential informants, an officer cannot be expected to make appointments in the office during normal business hours. Officers will need to discretely make contact with these informants at other than normal hours in places other than the office.⁵

Referrals to Other Field Offices

If during the course of conducting the case preparation an officer discovers that the target has moved to the jurisdiction of another Field Office, that officer will contact that Field Office and provide basic information. The target folder will be forwarded by the most expeditious means to the new Field Office with a routing memorandum from the sending office.

⁵ See 19.7 - Confidential Informants

~~FOR OFFICIAL USE ONLY~~
~~LAW ENFORCEMENT SENSITIVE~~



U.S. Department of Homeland Security
Bureau of Immigration and Customs Enforcement

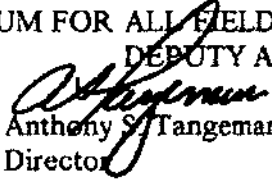
HQDRO 50/12.8

Office of the Director

801 I Street NW
Washington, DC 20536

AUG 21 2002

MEMORANDUM FOR ALL FIELD OFFICE DIRECTORS
DEPUTY ASSISTANT DIRECTOR FOR FIELD OPERATIONS

FROM: 
Anthony S. Tangeman
Director
Office of Detention and Removal

SUBJECT: Revision of Chapter 19 Title and Realignment of the Section Titles of the
Detention and Deportation Officer's Field Manual (DDFM)

The title of Chapter 19 is changed and the Section titles are realigned. Accordingly the DDFM is changed as follows:

**Chapter 19: Special Operations: Fugitive Operations, Alien Absconder Initiative,
Law Enforcement Support Center/Resolution Unit and Custody
Review Unit**

- 19.1 Fugitive Operations: Introduction and Background
- 19.2 General Policies
- 19.3 Pursuit Policy
- 19.4 Case Assignment, Preparation and Management
- 19.5 Field Operations/Tactics
- 19.6 Fugitive Operations Reporting Requirements
- 19.7 Confidential Informants
- 19.8 Prosecutions
- 19.9 Bureau of Immigration and Customs Enforcement (ICE) Most Wanted Program
(formerly 19.5)
- 19.10 LESC/NCIC/Other Source Responses
- 19.11 Liaison/ Task Forces
- 19.12 Tactical Communications
- 19.13 Uniforms and Equipment

Subject: Change to Title of Chapter 19 and Realignment of Section Titles

- 19.14 National Fugitive Operations Program Data Directory System (NFOP Directory or NOFPD)
- 19.15 – 19.19 Reserved
- 19.20 National Automated immigration Lookout System (NAILS) and Deportable Alien Control System (DACS) Absconder Interface (Previously 19.4)
- 19.21 – 19.24 Reserved
- 19.25 Law Enforcement Support Center/ Resolution Policy and Procedure
- 19.26 – 19.29 Reserved
- 19.30 Custody Review Unit Policy and Procedure

Questions concerning this chapter should be directed to the Chief, Fugitive Operations Branch by telephone at 202-353-3465 or cemail at: FUGOPS HQDRO, found in the cemail directory at: HQDRO FUGOPS.



U.S. Department of Homeland Security
Bureau of Immigration and Customs Enforcement

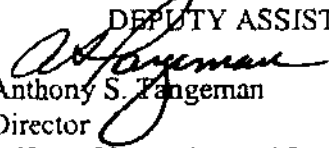
HQDRO 50/12.8

Office of the Director

801 I Street NW
Washington, DC 20536

AUG 21 2003

MEMORANDUM FOR ALL FIELD OFFICE DIRECTORS
DEPUTY ASSISTANT DIRECTOR FOR FIELD OPERATIONS

FROM: 
Anthony S. Tangeman
Director
Office of Detention and Removal

SUBJECT: Addition of Chapter 19, Section 1 (Introduction to Fugitive Operations Policy and Procedure Manual and Historical Perspective) of the Detention and Deportation Officer's Field Manual (DDFM)

The DDFM is changed to reflect the addition of Section 1, Chapter 19. Accordingly the DDFM is changed as follows:

19.1 Introduction to Fugitive Operations Policy and Procedure Manual and Historical Perspective

Deportation officers manage dockets of aliens placed into proceedings by the primary enforcement programs of the Bureaus of Immigration and Customs Enforcement (ICE) and Customs and Border Protection (CBP)¹. In an effort to stop the increase in the number of fugitives, the Commissioner of INS and the Attorney General signed *The National Detention, Transportation and Removal Plan* on June 27, 1995. The plan called for the creation of "abscondee removal teams".

The 1996 Appropriations Bill provided funding for 142 enhancement positions within the then Detention and Deportation (D&D) Program. While the positions were identified specifically for the "abscondee" or fugitive teams called for in the 1995 plan, the bill did not mandate the use of these positions for fugitive operations. Because there was no operational mandate, the positions were filled and absorbed into day-to-day D&D operations.

¹ Investigations, Border Patrol and Inspections. Cases also come to us from Asylum Offices and the Bureau of Citizenship and Immigration Services (BCIS).

On August 30, 1998, the legacy INS Executive Associate Commissioner for Field Operations signed the *Fugitive Apprehension Operations, Detention & Deportation Operations Unit Planning Initiative*. Again the creation of fugitive operations teams nationally as well as specific training necessary to accomplish the mission were called for in the latest plan. While the training was initially provided, the program again suffered from a lack of sufficient priority and focus. The training was discontinued and no teams were established.

With the terrorist attacks on September 11, 2001, the fugitive problem was brought to the forefront. Congress passed the landmark PATRIOT ACT on October 25, 2001. This legislation and the Deputy Attorney General's Absconder Apprehension Initiative (AAI) made the apprehension of absconders, or fugitives, a priority. The use of the National Crime Information Center (NCIC) as a force multiplier was an early goal of the AAI, calling for the placement of over 300,000 fugitives into NCIC.

The AAI designated the Law Enforcement Support Center (LESC) as the vehicle for placing fugitives into NCIC. Because some files were not complete and/or required additional preparation, Headquarters, Detention and Removal (HQDRO) established a 'Resolution Unit (LESC/RU)²' at the LESO to review and prepare files for inclusion into NCIC.

The PATRIOT ACT also provided supplemental funding and authorized an enhancement of 40 positions. This time the mandate was clear. These positions were to be used for the creation of dedicated fugitive operations teams. Headquarters designated seven cities³ for the initial eight teams.

Since then, HQDRO has received a FY 2003 enhancement that will allow for the addition of nine more teams⁴. A new training program has been established and chartered with not only providing training for all HQ designated teams but also every officer within DRO.

This Policy and Procedure Manual replaces all previously issued policies and standard operating procedures issued concerning the National Fugitive Operations Program (NFOP). Field Offices should provide local policy and procedure that compliment this manual. Local policies shall not be restrictive in their content but reflect local circumstances that could affect fugitive operations (FugOps). The intended goal of this manual is the elimination of backlog fugitive (formerly called Bag & Baggage) cases by the conclusion of Fiscal Year 2009.

² The LESO/RU is currently staffed with a rotating group of detailed Deportation Officers.

³ Newark, Detroit, Chicago, Miami, Los Angeles, and San Francisco each received one team. New York received two teams.

⁴ Boston, Baltimore, Atlanta, Houston, Seattle, Cherry Hill, NJ, Richmond, VA, Rock Island, IL, and the LESO/RU have been designated to receive one team each. Los Angeles has been designated to receive a second team.

Field Office Directors (FODs) shall conduct local FugOps in accordance with this manual. This manual is a living document subject to regular review and change by the Chief, Fugitive Operations Branch (FOB) every two years. However, should field officers find sections of this manual that need update or change, they are encouraged to submit their ideas in writing through the chain of command.



U.S. Department of Homeland Security
Bureau of Immigration and Customs Enforcement

HQDRO 50/12.8

Office of the Director

801 I Street NW
Washington, DC 20536

August 25, 2003

MEMORANDUM FOR ALL FIELD OFFICER DIRECTORS
DEPUTY ASSISTANT DIRECTOR FOR FIELD OPERATIONS

FROM: 
Anthony S. Jangeman
Director
Office of Detention and Removal

SUBJECT: Addition of Chapter 19, Section 2 (General Policies) of the Detention and
~~Deportation Officer's Field Manual (DDFM)~~

The DDFM is changed to reflect the addition of Section 2, Chapter 19. Accordingly, the DDFM is changed as follows:

19.2 General Policies

I. INTRODUCTION AND BACKGROUND

The removal of criminal aliens from the United States is a Bureau of Immigration and Customs Enforcement (ICE) top priority and a matter of Congressional concern for many years. This manual reflects ICE's commitment to encourage all aliens to comply with properly issued Removal, Deportation, and Exclusion Orders. It also represents ICE's commitment to locating, apprehending and removing aliens who have been ordered removed or granted the privilege of voluntary departure from the United States but failed to comply with those orders. Unless ICE takes practical steps in this regard, the practice of aliens ignoring adverse orders of the Executive Office of Immigration Review (EOIR), the Board of Immigration Appeals (BIA), and federal courts will continue.

II. MISSION

The mission of the National Fugitive Operations Program (NFOP) is to identify, locate, apprehend, process, and remove fugitive aliens from the United States. This mission will be carried out in a safe, professional manner.

III. AUTHORITY

Section 287 of the Immigration and Nationality Act (INA) contains the authority ICE officers have to arrest, detain and remove certain aliens from the United States. Each officer participating in fugitive operations will be familiar with the laws and procedures relating to search and seizure and the enforcement authorities under the INA. Officers will review the [REDACTED] concerning their authority as Immigration Officers. An excellent summary of the authority of Immigration Officers is contained in [REDACTED].

IV. DEFINITIONS

- A. **FOD.** Field Office Director.
- B. **Case Officer.** The individual who plans a fugitive operation, and prepares the Field Operations Worksheet (see sample, [REDACTED], attached). This officer is responsible for briefing other officers about the case and making contact with the fugitive at his/her residence or place of business.
- C. **General Assignment Deportation Officer.** Any deportation officer not assigned to one of the Office of Detention and Removal (HQDRO) designated Permanent Fugitive Teams.
- D. **Fugitive Operations Team (FOT).** Any group of deportation officers assigned to full-time fugitive operations. This could be an FOD designated team or a HQDRO designated Permanent Fugitive Team. A FOD designated team shall contain an even number of officers not counting the assigned supervisors, i.e. two, four, six, etc... HQDRO designated Permanent Fugitive Team organization is contained in [REDACTED].
- E. **Final Order of Deportation or Removal.** The order of the Immigration Judge, the Board of Immigration Appeals (BIA) or other such Administrative Officer to whom the Attorney General has delegated the responsibility for determining whether an alien is removable, concluding that the alien is deportable, removable or excludable or ordering removal. A final order is defined in [REDACTED].

F. Fugitive: Any subject, not in ICE custody, who:

- Is an alien who failed to depart the United States under either a grant of voluntary departure or removal order.¹
- Is an alien who has failed to appear for a hearing before an Immigration Judge.
- Is an alien who has failed to report to an ICE officer after receiving a legal order to do so.
- Is an alien who has failed to comply with any conditions placed on him/her when released on bond, order of recognizance or order of supervision.
- Is an alien who has failed to comply with the provisions of any program that requires him/her to report to ICE for any reason.
- Is any subject who is wanted by the Directorate for Border and Transportation Security for criminal violations of the Titles 8, 18, 19 and 21.

G. Incidental Arrest. The apprehension of a person other than a fugitive alien. Officers conducting fugitive operations shall take these subjects into custody and process for removal in accordance with the [REDACTED]

H. Informed Consent. Permission to enter or remain on a premises given by an owner, tenant, or resident of legal age.

I. Law Enforcement Officer (LEO). An officer or employee of an agency engaged in the administration of criminal justice pursuant to statute or executive order, including (1) courts; (2) a government agency or component which performs the administration of criminal justice as defined in 28 CFR Part 20 including the performance of any of the following activities: detection, apprehension, detention, pretrial release, post-trial release, prosecution, adjudication, correctional supervision, or rehabilitation of accused persons or criminal offenders. [See [REDACTED]]

V. GENERAL POLICY

- (a) Supervisory oversight is critical in ensuring that the NFOP is implemented consistently throughout the Service. As such, supervisors will ensure officers will receive all training, equipment, and leadership necessary to safely and effectively

¹ For purposes of clarity a removal order is any order issued either under the INA prior to or after April 1, 1997.

conduct fugitive operations. FODs are encouraged to establish local policy and procedure manuals that complement this manual but do not restrict operations that can be conducted under the authority of this manual. Local manuals shall concentrate on local considerations when conducting Fugitive operations.

(b) Fugitive operations may be conducted at any time during daytime hours² that is reasonable and necessary to support both the safe apprehension of the fugitive and the safety of the officers and general public. Justification for conducting operations during hours of darkness will be stated in writing on the Field Operations Worksheet. First line supervisors are charged with reviewing and approving fugitive operations. The FOD or someone designated by the FOD must approve of any operation conducted during the hours of darkness.

(c) A consideration in conducting an operation at the residence of a target could be the presence of small children. If the children attend school during daytime and the target is the one who takes or picks them up from school, apprehending the target at his place of employment would leave the children stranded at the school. However, apprehending the target at his home may afford the arresting officers the option of leaving the children with another adult who the target designates.

(d) A single officer may conduct investigative checks, attempts to locate, and surveillance; however, arrests should involve a team of at least two law enforcement officers. If an officer is conducting one of the functions listed above and sees or runs into the target, the officer may (at his discretion) initiate the arrest. He also may call and request assistance while maintaining surveillance on the target. It is highly recommended that whenever possible (for officer safety) two officers effect the arrest.

(e) If the intent of an operation is the arrest of a fugitive, officers must have a reasonable belief that the fugitive is in the suspected location prior to approaching the site. This shall be articulated on the Field Operations Worksheet (FOW). Supervisors are to determine the reliability of information gathered in the field regarding the location of a fugitive, and to act on that information.

(f) Whenever possible, a caged vehicle will be available to support fugitive operations.

(g) Criminal prosecutions under ~~18 U.S.C. Section 1024~~ as they relate to fugitives, shall be pursued as practicable.

(h) All training related to fugitive operations provided to ICE officers will be documented and maintained by a supervisor or designated Training Officer.

² For purposes of the NFOP Policy and Procedure Manual the term 'daytime' is defined as between the hours of 6:00AM – 10:00PM local time. [See Rule 41(h) – *Federal Rules of Criminal Procedure*.]

- (i) Local supervisors will provide a copy of this manual to all officers conducting fugitive operations. They shall maintain a written record of all officers who have received a copy or been made familiar with this manual.
- (j) Chief, Fugitive Operations Branch will be an information addressee on any Significant Incident Report (SIR) involving the injury or death of an officer or alien. He will review the SIR to ensure that this manual did not contribute to the incident.
- (k) Nothing in this manual shall take the place of an individual officer's common sense and experience. The most important consideration in any fugitive operation is officer safety. It is the responsibility of every supervisor and every officer involved in fugitive operations to follow good officer safety tactics. The next consideration is that the subject is apprehended in a safe, human, manner with the minimum force necessary to effect the arrest.

VI. TRAINING

~~An officer must have completed ICE³ basic law enforcement training, as identified under~~
~~§ 281.1(g),~~ before the FOD will authorize his/her participation in fugitive operations. Until time and training resources permit, deportation officers assigned to non-permanent fugitive operations teams shall conduct operations in accordance with this manual. ICE personnel from programs other than DRO may be tasked with assisting in fugitive operations. Their participation in the NFOP will not begin, however, until they have received and become familiar with a copy of this Policy and have received the requisite training.

³ For purposes of this manual officers who graduated from the Immigration Officer Academy (Special Agent, Immigration Enforcement Agent and Deportation Officer) or the United States Border Patrol Academy have met the basic training requirement enumerated in 8 CFR 281.1(g).



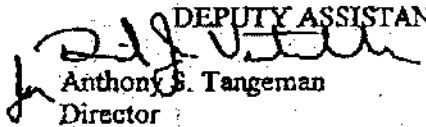
U.S. Department of Homeland Security
Bureau of Immigration and Customs Enforcement

HQDRO 50/12.8

Office of the Director

801 I Street NW
Washington, DC 20536

MEMORANDUM FOR ALL FIELD OFFICER DIRECTORS
DEPUTY ASSISTANT DIRECTOR FOR FIELD OPERATIONS

FROM: 
Anthony S. Tangeman
Director
Office of Detention and Removal

SUBJECT: Addition of Chapter 19, Section 3 (Fugitive Operations Vehicle Pursuit Policy)
of the Detention and Deportation Officer's Field Manual (DDFM)

The DDFM is updated to reflect changes to Section 3, Chapter 19. Accordingly, the DDFM is changed as follows:

19.3 Fugitive Operations Vehicle Pursuit Policy

I. BACKGROUND

Administrative Manual 4214.4 granted the authority to engage in high-speed/high-risk vehicle pursuits to Border Patrol Agents and Supervisory Border Patrol Agents who are driving marked sedans (pursuit vehicles). A high-speed/high-risk pursuit is defined as:

"...an active attempt...to apprehend fleeing suspects who are using excessive speed or committing a hazardous moving violation to avoid apprehension through evasive tactics."

Some examples of a hazardous moving violation include but are not limited to driving the wrong-way on a one-way street or radical lane changes without regard to traffic flow/conditions, etc...

II. POLICY

The use of an unmarked vehicle in a high-speed/high-risk vehicle pursuit is prohibited. Accordingly, because of the exclusive use of unmarked vehicles, officers assigned to

~~FOR OFFICIAL USE ONLY~~
~~LAW ENFORCEMENT SENSITIVE~~

Detention and Removal Operations shall not engage in any high-speed/high-risk vehicle pursuits. This policy also prohibits low-speed/low-risk pursuits. A low-speed/low-risk pursuit is defined as:

*"...an active attempt...to apprehend fleeing suspects who are **not** utilizing excessive speed or committing a hazardous moving violation to avoid apprehension by ignoring or failing to stop..."*

This restriction applies to all Detention and Removal officers regardless of their previous assignment, duty or training. This policy is intended to preclude any incident that may incur unnecessary liability to the Bureau of Immigration and Customs Enforcement (ICE) or an individual ICE officer. This policy does not prohibit the use of a moving or 'rolling' surveillance.

Nothing precludes an officer who has been previously trained in vehicle stops at the Federal Law Enforcement Training Center¹ (FLETC) from conducting a stop. Vehicles conducting vehicle stops must be equipped with emergency lights and sound making (siren) equipment as prescribed for law enforcement vehicles by the state in which the vehicle is normally assigned to operate.

Officers, who have never received FLETC training at one of the approved courses, may not use this equipment to conduct a vehicle stop.

III. PROCEDURE

Field Offices are authorized to retrofit their vehicles with the equipment necessary for the proper conduct of a vehicle stop. They shall identify those officers who have received the requisite FLETC training. They shall maintain and update the roster as other officers receive training.

This policy shall remain in effect until the new ICE enforcement standard concerning vehicle pursuits is issued. Once the standard is issued a training program will be established. It is anticipated that officers in unmarked vehicles will be allowed to engage in low-speed/low risk vehicle pursuits.

¹ For purpose of this policy, the FLETC training must have been at either the Immigration Officer Academy Basic Course, U.S. Border Patrol Academy or the Fugitive Operations Training Course.

~~FOR OFFICIAL USE ONLY~~
~~LAW ENFORCEMENT SENSITIVE~~



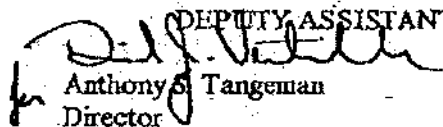
U.S. Department of Homeland Security
Bureau of Immigration and Customs Enforcement

HQDRO 50/12.8

Office of the Director

801 I Street NW
Washington, DC 20536

MEMORANDUM FOR ALL FIELD OFFICE DIRECTORS
DEPUTY ASSISTANT DIRECTOR FOR FIELD OPERATIONS

FROM: 
Anthony S. Tangeman
Director
Office of Detention and Removal

SUBJECT: Addition of Chapter 19, Section 4 (Case Assignment, Preparation and Management) of the Detention and Deportation Officer's Field Manual (DDFM)

The DDFM is changed to reflect the addition of Section 4, Chapter 19. Accordingly the DDFM is changed as follows:

19.4 Case Assignment, Preparation and Management

I. POLICY

This chapter is designed to provide each field officer with a national standard blueprint for case assignment, preparation and management. To achieve that goal the following policy shall be followed:

Offices with Permanent Fugitive Teams

The permanent Fugitive Operations Teams' (FOT) immediate mission is the elimination of fugitive cases in their assigned office. To that end they:

- > Shall only be assigned to fugitive cases with an emphasis on backlog cases.
- > Shall not be assigned to any duties that will deter them from conducting fugitive operations, including but not limited to, case management of general

~~FOR OFFICIAL USE ONLY~~
~~LAW ENFORCEMENT SENSITIVE~~

detained or non-detained dockets¹, escorts and collateral duties normally accomplished by general assignment deportation officers.

- Are expected to conduct continuous, on-going operations anywhere within the jurisdiction of their office.
- Will conduct operations in other jurisdictions when directed by Headquarters, Fugitive Operations Branch (HQFOB).

General assignment deportation officers are charged with working cases of aliens who have recently received a final order and been classified as fugitives. General assignment officers shall work new fugitive cases until such time as the case is deemed to be no longer viable.

Fugitives apprehended by the permanent teams shall be turned over to a general assignment officer who is responsible for that portion of the detained docket. The general assignment officer shall effect the actual removal of the alien.

Offices without Permanent Fugitive Teams

FODs of offices without permanent fugitive teams shall, if staffing levels permit, designate a fugitive team within their office. FODs should be creative in their design but the goal of eliminating the backlog of fugitive cases by 2010 remains. One solution could be the assignment of one officer to review A-files, conduct database checks (Choicepoint, DMV, etc) and create the fugitive/target folder (See ~~Appendix 19.4~~). That file would then be turned over to another general assignment deportation officer for field investigation.

II. PROCEDURE

CASE ASSIGNMENT

Notification of fugitive cases will arrive from various sources. Three primary sources of fugitive cases are: files containing final orders of removal subsequent to court proceedings, files forwarded from other field offices with leads developed for your follow-up, and cases that you may request based on tips received from outside sources. In any event, it is imperative that all cases involving fugitives are investigated prior to forwarding the case to the LESC for entry into NCIC. Accomplishment of this task will require supervisory oversight in the assignment, progress of the investigation, and documentation of the case status. Supervisors shall assign cases to officers using the G-600. It is recommended that cases be forwarded to the LESC for inclusion into NCIC within 45 days of the target being designated a fugitive. Procedures for forwarding cases to the LESC are contained in ~~Appendix 19.4~~.

¹This does not relieve the officer from maintaining a case DACS to which he is assigned and actively investigating.

~~FOR OFFICIAL USE ONLY~~
~~LAW ENFORCEMENT SENSITIVE~~

One of the greatest benefits to be derived from a well organized fugitive apprehension program is the ability to identify and target those fugitives amenable to immediate and unimpeded removal. In order for this benefit to be realized some basic principles must be followed.

CASE MANAGEMENT

Cases will be primarily managed and monitored utilizing the *Treasury Enforcement Communications System* (TECS). Instructions for the use of TECS will be provided when published by the Bureau of Immigration and Customs Enforcement. However, Deportable Alien Control System (DACS) must remain current and up to date. This is especially important if a FOT is to be properly credited for apprehensions. Members of HQDRO designated FOTs shall not be assigned to any general docket management. Their responsibility is the investigation, location and apprehension of a fugitive.

Their only duty with respect to DACS is to ensure that a case has been properly coded in DACS as a fugitive and (using DACS as a case management tool) update DACS as the investigation progresses. Once a fugitive has been apprehended the entire case will be turned over to the general assignment deportation officer who is responsible for the target's portion of the docket.

Verification of Removability

A basic function of a Deportation Officer assigned to the program is to conduct a thorough review of the A-file to determine an alien's eligibility for removal. This function entails the review of all documents contained within the A-file and checks of all available ICE data base indices. In addition, efforts must be made to confirm or deny the existence of any court actions pending before both the Immigration Court and United States District Courts having jurisdiction over a given case. Such actions could affect the Service's ability to remove an alien.

Officers must also make every effort to determine whether or not a given alien is wanted by another agency or has charges pending before any court. Although our intent is to expeditiously remove aliens with final orders we have the responsibility of ensuring, to the extent possible, that state, local and federal agencies are afforded the opportunity to prosecute aliens charged with crimes under their jurisdiction.

Determination of Probability of Unimpeded Removal

As previously mentioned, a key feature of this initiative is the ability to target aliens whose removal can be executed. There will always be circumstances that will warrant the location and apprehension of non-removable aliens due to public safety or national security concerns. That being said, those aliens where the probability of removal success is high should be targeted first.

~~FOR OFFICIAL USE ONLY~~
~~LAW ENFORCEMENT SENSITIVE~~

Each field office should be prepared to have adequate detention space available for the arrests that are brought in. One suggestion on eliminating long detention stays would be to attempt to obtain a travel document even before the arrest is made. It is a difficult thing to do but it is something to consider.

Aliens who have violated Title 8 United States Code 1253 should be presented to the local United States Attorney for prosecution.²

Disposition of Cases not Resulting in a Fugitive Apprehension

It is anticipated that there will be cases where after reasonable measures have been taken, the location of the fugitive cannot be ascertained. In such circumstances field officers are to update the case in TECS as well as in DACS. Supervisory concurrence will be required documenting that all reasonable investigative checks/leads have been pursued prior to removing an assigned case from the active fugitive docket. To assist in follow-up investigations, field notes as well as database inquiries gathered during investigation should be included in the fugitive's target folder.

The Law Enforcement Support Center (LESC) has been tasked to assist ICE fugitive operations by entering all fugitive cases into NCIC. Investigations that do not lead to the location of the fugitive are to be properly recorded and forwarded to the LESC for entry into the NCIC System. If the fugitive is located outside of the file control office's area of responsibility, the file should be properly forwarded to the office nearest the location of the fugitive. A sample memorandum forwarding a case to another office is contained in ~~Appendix 19.4~~.

Prior to forwarding the case to the LESC, officers are to ensure that the information contained in the alien's file meets the requirements for entry into the NCIC database.³ Officers are to create and maintain a target folder with pertinent information on all absconder cases that have been forwarded to the LESC. The target folder will be used for subsequent investigations, operations, forwarding to other Field Offices or arrest operations.

III. CASE PREPARATION

The following should be the minimum actions taken prior to conducting a fugitive operation:

- Conduct a complete review of the subject's file. Officers should conduct a review of other pertinent documents to gather investigative leads. This includes, but is not limited to:
 - Form I-156(s), if sent;

² See 19.8 - Prosecutions.

³ See Appendix 19-4.

~~FOR OFFICIAL USE ONLY~~
~~LAW ENFORCEMENT SENSITIVE~~

- Current address;
 - Current criminal history printout;
 - All available records, including computerized state and federal criminal records;
 - Driver history and DMV-registered vehicles, if applicable; and,
 - Any pending forms of relief (judicial stay orders) or conditions (medical, etc.) that would preclude the alien from removal.
- Create a target folder as outlined in Attachment-19-3. (A-files shall not be taken into the field and will be forwarded to the LESC, when appropriate, after the target folder is created).

RECORD CHECKS

When conducting record checks with any agency, officers should keep in mind the principles contained in ~~Chapter 19.4~~.

U.S. Postal Service:

Initially, contact should be made with the local Post Office personnel to determine if the fugitive is receiving mail at any known address. The Postal Service has a form *Information Needed for Service of Legal Process* (~~Appendix A~~) that you will need to complete in order to retrieve information.

Postal checks should be conducted prior to 8:00AM so that you can speak with the appropriate letter carrier prior to the commencement of their route. You should initially speak with the Postmaster and explain what you are doing. You should then ask the Postmaster to allow you to speak with the letter carrier who handles that area. When speaking to the letter carrier, a photograph of the fugitive should be made available. You should also inquire about any change of address or forwarding requests. If the last known address of the fugitive is a P.O. Box, you should check the "application form" the fugitive filled out to get the box, as applicants are required to list their actual address on the application. This may provide another possible address for the fugitive.

Another good source of information is the Postal Inspectors, the enforcement branch of the Postal Service. They can provide mail covers at a specific location; track the mail that is being received at a particular residence and the mail coming out of the residence. Contact information for Postal Inspectors can be found in the SAFM, ~~Appendix B~~.

Local Police Departments:

If you believe you have identified a city in your jurisdiction where a fugitive may reside, you should immediately make personal contact with the local Police Department, preferably with someone in the detective division. You should explain the Warrant of Deportation/Removal to them and leave copies of the Wanted Poster. Depending on the existing liaison with that department, you may want to personally deliver the Wanted Poster to detectives assigned to every shift, as well as supervisory uniformed officers from every shift. Be sure to emphasize if the fugitive is listed in NCIC and that you will respond immediately if they encounter/arrest the fugitive. Other than Confidential

~~FOR OFFICIAL USE ONLY~~
~~LAW ENFORCEMENT SENSITIVE~~

Informants, police departments will probably be your most valuable resource. Should your investigation lead to the conclusion that an alien has moved outside of your area of operations, then you should either check with that department or refer the case to the appropriate Field Office⁴.

Courts/Parole/Probation Departments:

If the fugitive is a criminal alien, contact should be made with any and all probation officers that had prior interaction with the fugitive. If the fugitive is currently on probation, you should be present at the probation office the next time the fugitive is required to report in order to effect the arrest. Contact should be made with the Clerk of the Court to review the court docket relating to the fugitive and develop any information in the court file.

Correctional Institutions:

If the fugitive is a criminal alien, personal contact should be made with personnel from all correctional facilities, including ICE Service Processing Centers, where the fugitive was previously detained. While at the facility you should review any visitation logs and inmate intake processing information that may provide additional leads. You should also obtain a photograph of the fugitive, if necessary, while at the facility.

Employment Checks:

Contact should be made with the fugitive's last known employer as the fugitive may still be working there. It is best to meet with the personnel manager when you conduct this visit. When speaking with the personnel manager you should emphasize that you wish to speak with only one employee and that you are not there to inspect/review any I-9 forms. If the fugitive is still employed there, request the personnel manager have the fugitive report to the personnel office, at which time you can effect the arrest in a confined area and prevent disruption of the work area and other personnel. If the fugitive is no longer employed there, you should ask to review the fugitive's employment application from the company files to look for any leads you may have yet to develop.

Banks/Credit/Insurance Organizations:

Banks and credit organizations can provide detailed financial information, however you will probably need to know the social security number of the fugitive, as most credit information is based on this. Supervisory personnel should develop and maintain liaison with high level officials from these organizations, as much of the information they provide must be kept confidential. Depending on the organization they may be able to provide detailed computer printouts. These printouts may indicate the date the fugitive conducted financial/credit transactions and with which companies. They may also list account information, child support payments, etc. Contact should then be made with

⁴ See this section entitled - "Referrals to Other Field Offices".

~~FOR OFFICIAL USE ONLY~~
~~LAW ENFORCEMENT SENSITIVE~~

the security directors of these companies who can provide information such as where monthly statements are mailed, which branches of banks transactions are conducted and other related items which may provide additional leads.

Schools:

In the event that the fugitive has children of school age, you should speak with the principal of the school that you believe the child may attend. This may provide you with additional addresses and telephone numbers. You should also show the photograph of the fugitive to the principal and ask if the fugitive picks up the child after school. If so, surveillance should be conducted at the school at the appropriate time. You should never arrest the fugitive inside the school and avoid if possible arresting on or near school grounds. Additionally, *absolutely never* approach a child of a fugitive or any other child/student in a school or on or near school grounds. Any benefits of doing so, if there are any, are immensely outweighed by the drawbacks.

Choicepoint:

This is an excellent investigative tool for fugitive operations. Choicepoint can provide information on property owned by the alien, addresses where the alien has lived at or where he has made applications to rent or lease property, businesses to which the target has made credit applications and used his social security number and other transactions where the target must provide information to conduct business or simply to live. It requires password access that must be granted by Choicepoint. The form requesting access may be sent in cc: Mail to AAIDRO. See ~~XXXXXXXXXX~~ for the access form.

Confidential Informants

One of the most effective tools used in the location of fugitives is the use of confidential informants. Because of the nature of dealing with confidential informants, an officer cannot be expected to make appointments in the office during normal business hours. Officers will need to discretely make contact with these informants at other than normal hours in places other than the office.⁵

Referrals to Other Field Offices

If during the course of conducting the case preparation an officer discovers that the target has moved to the jurisdiction of another Field Office, that officer will contact that Field Office and provide basic information. The target folder will be forwarded by the most expeditious means to the new Field Office with a routing memorandum from the sending office.

⁵ See 19.7 - Confidential Informants

~~FOR OFFICIAL USE ONLY~~
~~LAW ENFORCEMENT SENSITIVE~~

Processing Subsequent to Apprehension

Prior to making the arrest, a decision should have been made to determine if prosecution is appropriate. If the decision was made to prosecute, or if circumstances arising out of the arrest have indicated a need to pursue prosecution, the officer should immediately initiate action to process the fugitive accordingly.⁶

If prosecution is not contemplated, officers will follow standard processing procedures for the removal of an alien with a final order. In addition to these procedures, and subsequent to the arrest of all fugitives, officers will prepare a Record of Deportable/Inadmissible Alien, Form 541. Officers will pay particular attention in the narrative portion of the form to the following items that may assist officers in locating/apprehending the fugitive in the future:

- Vehicle information/location;
- Specific location of arrest including identity/relation/alienage of other individuals present;
- Escape attempt/violence when effecting the arrest;
- Use of weapons encountered; and,
- Any other items you feel may be helpful.

Officers will close out the case by making the necessary updates on forms 2-1366 and 2-1367. Supervisors will close out the case on Form 2-1366. The officer and his supervisor shall close the case out (b)(7)(C). The deportation assistant will complete the final case closure by completing the Fugitive Operations screen in DACS.

Officers must ensure that all other cooperating agencies that received notices and/or Wanted Posters on the apprehended fugitive are notified of the case closure. Ensure they are aware of the final disposition of any case they are involved in so they are not continuing to exhaust valuable time and energy attempting to locate a fugitive who is already gone. Make them aware, however, if the possibility exists that the fugitive will return subsequent to the latest removal action.

Interview/Referral of Fugitives Apprehended

In conjunction with the Alien Absconder Initiative (AAI), apprehensions involving aliens from countries identified by the Intelligence Community as having terrorist connections are to be immediately reported by D&R to the Custody Review Unit (HQDRO). The local ICE Investigations (INV) Representative to the Joint Terrorism Task Force (JTTF) having jurisdiction in your area shall also be notified. If there is no ICE INV Rep, then the JTTF will be contacted directly. Should there be no JTTF, officers will contact the local office of the Federal Bureau of Investigation. One of the considerations of a local manual should be identification of JTTF points of contact or the lack of a local JTTF. In

⁶ See 19.8 - Prosecutions

~~FOR OFFICIAL USE ONLY~~
~~LAW ENFORCEMENT SENSITIVE~~

In the event the alien that is taken into custody is a prior deport, officers are reminded to consult ~~Chapter 19.4~~ of this manual regarding Prosecutions.

Documentation that these referrals were accomplished will be included in the narrative of the Form I-213, and placed in the subjects target folder.

Other than Immigration Offenses

During the course of an operation, officers may encounter firearms, controlled substances or other illegal activities inside a residence or place of business. In such cases, the local police department or sheriff's office will be contacted and the items turned over to that agency. These actions will be recorded on Record of Deportable/Inadmissible Alien ~~Form 213~~, Report of Apprehension or Seizure ~~Form 213~~ and the Fugitive Operations Worksheet ~~Appendix 19.4~~.

Form I-44 shall be prepared when a citizen or non-deportable alien is apprehended for violation of the INA or the person arrested or article seized is delivered to an agency outside ICE or when such an arrest or seizure is made in a joint operation with another agency. A copy of Form I-44 and I-213 shall be placed in the A-file and target folder.

IV. REMOVAL OF APPREHENDED FUGITIVES

Travel Document Management

Travel document procurement is vital to the expeditious removal of aliens. If a travel document is not contained within the A-file, one exists but has expired or is otherwise not available; the procurement process should start well before the alien is apprehended when possible. Offices with Fugitive Operations Teams (FOT) will coordinate their efforts with the Case Officer who will handle the case after apprehension. It is important that the FOT member communicate with the Case Officer regularly.

No Travel Document Exists or Existing Document Has Expired

Once a fugitive has been located and an apprehension can be effected at will, the FOT Case Officer should coordinate the apprehension with the General Assignment Case Officer. In that way, perhaps the General Assignment Case Officer can initiate a travel document request prior to apprehension. This will facilitate speedy removal and minimize detention time. Limiting detention time will in turn decrease the opportunity for the fugitive to initiate a court action that could subvert his or her removal. Again offices with permanent FOTs will coordinate the requesting of the Travel Document with the Case Officer who will receive the case following apprehension.

Officers engaged in apprehending fugitives should make every effort to obtain travel documents at time of arrest. This may include conducting thorough searches of any area where the alien may have such a document. In some cases it may be necessary to

~~FOR OFFICIAL USE ONLY~~
~~LAW ENFORCEMENT SENSITIVE~~

transport the alien to their residence to obtain the document. It must be stressed that when this is the case, officer safety is paramount and may entail assigning additional officers to the task. Though there may be circumstances that will prevent efforts to obtain travel documents subsequent to arrest, however, these situations should be the exception rather than the norm.

Escort Planning

Escort planning goes hand in hand with travel document management, as many consulates require itineraries prior to issuing travel documents. Anytime an escort can be planned prior to an apprehension, the efficiency in which an alien can be removed is increased. The FOT Case Officer shall notify the General Assignment Case Officer in advance of an apprehension whenever possible. The General Assignment Case Officer can then make preliminary coordination with his or her Detention Section.

Consular Notification

Consular notification shall be handled per existing policy and guidance and is the responsibility of the apprehending officer. The list of countries that must be contacted is contained in ~~2006-2007~~. Officers should also be familiar with *Consular Notification and Access (State Department Publication 10969)*. It is available on line at www.state.gov or hard copies can be ordered from (202) 647-1512.

Final Notes

Always remember to *pay recognition* to cooperating agencies, both within and without of the law enforcement community, with Letters of Commendation and/or wall plaques, etc., for any assistance rendered in locating/apprehending a fugitive. It will help to reinforce and solidify further cooperation between agencies. However, always remember that some agencies do not desire to have their active participation made public. This can generally be said of some large city police departments.

V. REPORTING REQUIREMENTS

All fugitive arrests will be reported through the Fugitive Operations Database. The report is due by close of business (COB) every Wednesday for the all arrests made from the previous Thursday. Information and instructions for the use of the database can be found in ~~2006-2007~~. This reporting system is scheduled to be replaced with the full implementation of the (b)(7)(E) Module.

~~FOR OFFICIAL USE ONLY~~
~~LAW ENFORCEMENT SENSITIVE~~



U.S. Department of Homeland Security
Bureau of Immigration and Customs Enforcement

HQDRO 50/12.8

Office of the Director

801 I Street NW
Washington, DC 20536

MEMORANDUM FOR DISTRIBUTION

FROM:

Anthony S. Tangeman
Anthony S. Tangeman
Director

Office of Detention and Removal

SUBJECT: Addition of Chapter 19, Section 5 (Field Operations/Tactics) of the Detention and Deportation Officer's Field Manual (DDFM)

The DDFM is changed to reflect the addition of Section 5, Chapter 19. Accordingly the DDFM is changed as follows:

19.5 Field Operations/Tactics

I. POLICY

The primary concern during any field operation is the safety of officers, targets and innocent third parties. When conducting field operations, the best way to protect all parties concerned is to always be as thoroughly prepared as possible prior to initiating any action. Officers conducting fugitive operations shall prepare a Fugitive Operations Worksheet (FOW) on each individual case and submit it to the supervisor of the designated HQDRO FOT. Teams designated by the FOD shall submit their FOW to a supervisor designated by the FOD.

When a FOT contemplates an operation to target a large group of fugitives, one that will extend over several days, or may generate media interest beyond the area of operations, then an Operations Plan (OpPlan) must be created. The OpPlan format is contained in ~~Appendix B~~. The designated case officer will prepare the OpPlan and present it through the chain of command for FOD approval. Concurrence for significant operations (national impact, high profile, etc...) must be obtained from the Deputy Assistant Director for Field Operations.

~~FOR OFFICIAL USE ONLY~~
~~LAW ENFORCEMENT SENSITIVE~~

OpPlans should be given a name [i.e. Operation Predator (OPPED)] that will readily identify the operation for reporting/data tracking purposes. OpPlans submitted for Deputy Assistant Director for Field Operations concurrence may propose a name for their the operation but final approval for the operation's name shall reside with HQ. Chief, Fugitive Operations Branch (FOB) shall maintain a roster of previously approved names to ensure that no name is used twice. While FODs are not required to submit every OpPlan for approval, it is recommended that the name of the operation be forwarded to ensure that no other operation has been undertaken using that name. The list maintained by FOB will also include operations approved by FODs. Should a name proposed for a local operation been previously used by another Field Office or used as part of a national/significant operation, FOB will notify the Field Office and ask for another proposed name. If an OpPlan is submitted, then a Significant Prospective Enforcement Action (SPEA) is not required.

Due to geography, FOTs may be required to operate in more than one Field Office jurisdiction. To that end FOTs will create a standard OpPlan for operating in other jurisdictions. For example: New York could conceivably end up operating in Newark, Cherry Hill or even Philadelphia. The FOT Supervisor in New York would establish a working relationship with the FOT Supervisor(s) [or the Supervisor over fugitive operations in Field Offices that do not have a designated FOT] in areas where his team might have to operate. At a minimum this coordination will address points of contact, notification procedures and mutual assistance arrangements. Each Field Office will also provide information on points of contact with local law enforcement agencies, locations of emergency medical facilities and any other officer safety information that will allow an outside FOT to operate in a safe and successful manner.

II. DISCUSSION

Upon completion of the A-file review, work-folder preparation and consultation with appropriate sources, you are now ready to attempt to locate the fugitive. The results of your completed checks should be noted on the "Memorandum of Investigation" ~~1620~~, and the right side column of the "Investigative Workplan" ~~1620~~. You should remember to leave your business card and copies of the Wanted Poster with appropriate agency personnel and a 24-hour business telephone or pager number, if possible. You should also request photocopies of any and all documents that you review and deem appropriate during the course of your investigation. Some agencies' procedural rules require that you submit a subpoena. The authority to issue a subpoena is contained in ~~1620~~ and shall be issued on ~~1620~~.

One of the most important things to remember when attempting to locate fugitives is that actual residence checks should only be conducted as a last resort if all other leads have proven negative. One reason is that the residence is familiar ground to the fugitive and could potentially be a place where weapons or other items are available. The second reason is that Warrants of Deportation or Removal are administrative rather than criminal, and it does not grant the authority to breach doors. Thus permission must be obtained from the occupant of the residence prior to entering. If you knock on a door

~~FOR OFFICIAL USE ONLY~~
~~LAW ENFORCEMENT SENSITIVE~~

and the fugitive isn't there, the person you speak with will probably make contact with the fugitive, making it that much more difficult to locate the fugitive.

You should also keep in mind that whenever possible, arrests that cannot be effected in controlled environments such as in courts, probation offices, etc., should be made in public areas. Locations such as parking lots, sidewalks in front of residences or businesses and other such areas eliminate the question of consent when entering a dwelling or enclosure.

Whenever conducting an operation to effect the arrest of a fugitive, you will always have a briefing prior to the operation. At the briefing you should discuss the case, any information about the fugitive, the general location where the operation is to take place and to make personnel assignments.

Once an operation has been completed, a debriefing will be held to discuss what went right and what went wrong during the operation. This will establish a 'Best Practices' database that can be shared with other FOTs on a regular basis.

III. SURVEILLANCE ACTIVITIES

Once you believe you have identified an area that the fugitive frequents, surveillance may be required. Whenever possible, you should have binoculars, night vision, and a hand held tape recorder available during surveillance activities. Binoculars/night vision may be needed, as you may not be able to surveil the target location at a close proximity. A portable tape recorder is helpful in the event you are alone and want to drive by the target neighborhood and gather license plates from vehicles parked in the area. It is also useful in documenting movements while tracking a fugitive, or the fugitive's acquaintance (s). Using a tape recorder is much simpler than attempting to document movements or license plates in written form.

One of the most important elements of surveillance is patience. There is no way to determine in advance, how much time will be needed when conducting surveillance operations. The fugitive may appear in a matter of minutes, several hours, or not at all. If conducting surveillance over long periods of time the primary surveillance vehicle should be changed and moved periodically. Confidential Informants (CIs) may be used in place of or in conjunction with surveillance activities as they can often frequent areas where law enforcement officials/vehicles would create suspicion. When conducting surveillance with a CI on site, you may want to provide the CI with a transmitter that can be heard through Service radios. This transmitter must be monitored constantly whenever the CI is operating. This may be especially important in high-crime areas for the protection of the CI. Information on consensual monitoring can be found in the Special Agent's Field Manual (SAFM), ~~Chapter 24~~.

The best vehicles to use for surveillance are those that create the least amount of suspicion. Proper surveillance cannot be conducted utilizing a Crown Victoria or Caprice. These vehicles announce to the neighborhood that you are law enforcement

officers and destroy any chance of conducting effective surveillance. It may also jeopardize the safety of the officers conducting the surveillance. Vehicles that are appropriate for surveillance activities are those that look like standard family type vehicles. Minivans with roof racks and child seats; SUVs with custom wheels, tires and roof racks; pickup trucks and maxivans disguised as work trucks (plumbers, carpenters, general contractors, etc.); and upgraded foreign and domestic mid-sized sedans make the best and most inconspicuous and effective vehicles for surveillance and general fugitive operations utilization.¹

If a static surveillance is designed to simply locate a targeted fugitive, a lone officer in a vehicle may be used. However, in the event that it is anticipated that the surveillance will include tracking a target throughout a general area, by foot or vehicle, additional officer and vehicle assets are required. Standard training in surveillance procedures dictates that two officers operate per vehicle so one may be dropped off to continue the surveillance in the event the target leaves a route that may be covered by a vehicle (entering a mall or other area that may not be accessible by vehicle). Additionally, multiple officer and vehicle teams ensure movement through traffic in a safe and efficient manner with less likelihood of discovery.

IV. PREPARING FOR THE ARREST / OPERATION

Officers shall begin each field operation with a briefing and the content of that briefing will be the results of the officer's preparation of the target folder. The type of briefing should reflect the complexity of the mission; detailed operations plans may be required for more complex briefings. The Team Leader will designate a site for briefing and debriefing prior to the beginning of each operation. The team will meet and discuss primary and alternate plans. The Case Officer will familiarize the rest of the team with the specifics of each case. The Team Leader will determine the duties of each participant and clarify each team member's assignment. ***All briefings shall describe the exact type of warrant being executed, i.e. Administrative, Criminal Search or Criminal Arrest. This is particularly important when other agencies (who do not normally conduct administrative arrests) are part of an operation.***

If at any time during a field operation, **ANY** officer concludes that officers are performing in an unsafe manner, placing themselves or others in danger, or otherwise unprepared for the task, the operation will be immediately postponed until the Team Leader is consulted. The Team Leader will then decide whether to terminate or continue with the operation.

Note: Officers shall have copies of the Final Order and contact numbers for local law enforcement agencies readily available.

¹ Regardless of how the vehicle is outfitted, officers should avoid utilizing black, white or navy blue SUVs, vans or sedans for operations. These colors have become standard law enforcement issue for both marked and unmarked vehicles.

V. ARREST LOCATIONS

Arresting an alien at his or her residence or place of employment following an investigative field interview can be a difficult and potentially dangerous task. Officers can knock on a door and request to speak with the occupants of the house without first obtaining a search warrant. However, in order to enter a residence, **someone who has authority to do so must grant informed consent, unless a court-approved search warrant is obtained in advance.** When consent to enter is given, the officer must note at what time, and who gave consent. The *Consent to Search Premises* (Form I-213) shall be executed and noted in the I-213.

The Contact Officer should announce the Team's presence by clearly saying, "Police." A second announcement, in an appropriate second language, may also be given. Only after a Team has gained entry should the occupants be told that the officers are federal law enforcement representatives of the Bureau of Immigration and Customs Enforcement. The person certainly has the right to refuse to open the door but the **officer should not begin the interview until the door is opened and preferably after entry is gained.** If the door is closed, the officer may not be able to see a threat to his or her safety developing. Officers shall display credentials when asked, and as soon as it is safe to do so.

Once inside the building the Team Leader (TL) should ensure the safety of the team by directing the thorough securing of the remaining rooms of the site. This will normally require informed consent as well. Until the target is positively identified, consent can be withdrawn at any time prior to an arrest. Once the fugitive is physically located, officers may complete the arrest.

The Contact Officer and only the Contact Officer will speak to people at an arrest location. Cover Officers should direct their attention to ensuring that the scene remains secure. If asked a question the Cover Officer shall direct the person to the Contact Officer.²

Prior to departing the residence, obtain all available identification relating to the fugitive's nationality, as well as any necessary medication. All fugitives shall be questioned as to their health before removing them from the location where they are encountered. If a fugitive has a serious medical problem, the TL should decide whether or not to effect the arrest. All fugitives who are not citizens and nationals of Mexico or Canada will be questioned as to whether they have a travel document before they are removed from the arrest site. Officers should secure available travel documents while the alien is still at the residence.

In the event that the team is conducting a check at the fugitive's last known employer, it may be best to meet with the personnel manager when conducting this visit. When speaking with the personnel manager the TL should emphasize that you wish to speak

² *Contact and Cover* by Steve Albrecht is an excellent training resource for those officers who have never had formal training in 'Contact and Cover' principles.

**FOR OFFICIAL USE ONLY
LAW ENFORCEMENT SENSITIVE**

with only one employee and that you are not there to inspect/review any I-9 forms. If the fugitive is still employed there, request the personnel manager to have the fugitive report to the personnel office, at which time you can effect the arrest in a confined area and prevent disruption of the work area and other personnel.

Officers should leave information, including a telephone number, indicating where the fugitive will be detained and how to contact that person.

Nothing in this section prohibits an officer from entering into an area of a business or other activity to which the general public has access without a warrant, consent or any particularized suspicion in order to question any person whom the officer believes to be an alien concerning the alien's right to be or remain in the United States.

Fugitives Encountered in Vehicles

In the event a fugitive is encountered while in his or her vehicle it is preferable that the arrest be made once the fugitive exits after parking. However, if waiting for the fugitive to stop is not an option, officers may conduct formal vehicle stops consistent with local and state policy. If sufficient assets are in place and previous operational planning has taken place for this contingency, a ruse stop, as provided during previous fugitive operations training sessions, may be used in lieu of a traditional full felony vehicle stop. Previously established liaison with local agencies could prove beneficial, as some agencies will provide assistance, such as conducting a ruse stop in one of their marked vehicles.³

VI. SUPERVISION

Supervisors are encouraged to accompany teams in the field whenever possible. A designated supervisor shall be reachable at all times when a team is conducting an operation. A supervisor will respond to the Team Leader's field location when requested to do so.

VII. CRITICAL INCIDENTS

If a unit is involved in a critical incident the TL or senior officer present will immediately notify their supervisor. The supervisor will immediately report to the location to gather information, secure the scene and provide assistance to the officers involved. Any officer who participates in or observes a reportable shooting incident shall follow the reporting requirements set forth in the ~~Policy Manual~~. Supervisors should have a plan in place for conducting debriefings and counseling following critical incidents. One method is to contact a local law enforcement agency that has an established Critical Incident Response Team. These teams can help alleviate the psychological impact of a critical incident.⁴

³ Officers are reminded that vehicle pursuits of any type are forbidden. [See 19.3]

⁴ Information on Critical Incident Stress management can be obtained from the International Critical Incident Stress Foundation at 410-750-9600.

~~FOR OFFICIAL USE ONLY~~
~~LAW ENFORCEMENT SENSITIVE~~

agency should be consulted prior to either a public or private acknowledgement of their assistance.

Operations with the potential to generate publicity (positive or negative), garner media attention, cross-jurisdictional boundaries, or involve multiple agencies require an OP Plan be forwarded to HQDRO for approval. As part of the approval, HQDRO will designate the official name of the operation.

XI. TACTICAL OPERATIONS

Full tactical (SWAT type) operations are not justified during fugitive operations when only administrative warrants are being enforced. Only during the serving of criminal arrest/search warrants may this type of operation be justified. Chief, Fugitive Operations Branch is assigned to developing a program for the tactical training of HQDRO designated Fugitive Operations Teams.

To that end training programs (private, local law enforcement agencies, and military) shall be evaluated to see which courses would provide the level of training needed to conduct tactical service of criminal arrest/search warrants. Supervisory Deportation Officers of HQDRO designated Fugitive Operations Teams will seek training programs in their areas and provide information to the Chief, Fugitive Operations Branch. Courses approved for attendance which meet the training requirements needed to conduct tactical operations will be published by separate correspondence.

XII. POST APPREHENSION DEBRIEF

Supervisors shall conduct a post apprehension debrief following each operation. This is particularly important if problems are encountered during the operation. The supervisor shall maintain a written record of the debrief which will include a section on 'Lessons Learned' if appropriate. These debrief records will form the base for future training and even suggestions for updates/changes to this manual. The debrief shall be attached to a copy of the OpPlan or FOW.

XIII. REPORTING REQUIREMENTS

Officers are reminded that arrests must be reported weekly unless HQDRO directs more frequent reporting. The Fugitive Operations Apprehension Report  shall be used to report all fugitive arrests.

~~FOR OFFICIAL USE ONLY~~
~~LAW ENFORCEMENT SENSITIVE~~



**U.S. Immigration
and Customs
Enforcement**

AUG 15 2005

MEMORANDUM FOR: All Field Office Directors
ICE Academy

FROM: John P. Torres
Acting Director 

SUBJECT: Addition to Section 5, Chapter 19 (Field Operations and Tactics)
of the Detention and Deportation Officer's Field Manual
(DDFM) – **Use of Ruses During Arrest Operations**

Purpose

This memorandum announces an immediate addition to Section 5, Chapter 19 of the DDFM.

Action

Field Office Directors will ensure that all personnel who conduct enforcement operations within their area of responsibility are aware of this addition. The ICE Academy will ensure that future students of the Fugitive Operations Training Program (FOTP) as well as all other DRO structured courses are made aware of this addition. A revised Section 5 will be issued in the near future.

This addition will be inserted in paragraph V. (Arrest Locations) just before the section labeled '**Fugitives Encountered in Vehicles**':

Use of Ruses During Arrest Operations

The USMS, FBI and various other federal, state and local agencies have successfully used 'ruses' to lure targets to locations where the arrests were made with the least amount of danger to both the officers and targets. The use of a ruse during an arrest means that we control the time and location, not the target. The use of ruses is taught in the FOTP at FLETC.

Ruses can run the gamut from announcing that you are with DRO and looking for a person other than the target to adopting the guise of another agency (federal, state or local) or that of a private entity. When using the name of another agency or that of a private entity to cover the operation, the Team Leader will contact that agency or entity. The initial point of contact with the proposed cover agency or entity should be the local agency head or the local chief of security of the private entity. A memorandum to the file should be prepared to document these discussions.

www.ice.gov

SUBJECT: Addition to Section 5, Chapter 19 of the DDFM
Page 2

The purpose of the contact is to ensure that the agency or entity's name who we wish to use as a cover has an opportunity to raise concerns about how our use of their name will affect their public image or raise security concerns for their employees. Private entities can be particularly sensitive to the use of their name in law enforcement operations.

If the affected agency or entity has concerns with the use of the ruse, contact the Headquarters Fugitive Operations Unit. The HQ/FOU will weigh the affected agency or entity's equities and concerns against the well-known and inherent advantages that a ruse offers. It is our intention to use whatever means available to ensure that officer, target and innocent third party safety is not compromised.

Any questions regarding this policy should be directed to (b)(6), (b)(7)(C) Chief, Headquarters Fugitive Operations Unit at (202)353-(b)(6)



U.S. Department of Homeland Security
Bureau of Immigration and Customs Enforcement

HQDRO 50/12.8

Office of the Director

801 I Street NW
Washington, DC 20536

MEMORANDUM FOR ALL FIELD OFFICE DIRECTORS
DEPUTY ASSISTANT DIRECTOR FOR FIELD OPERATIONS

FROM: 
Anthony S. Tangeman
Director
Office of Detention and Removal

SUBJECT: Addition of Chapter 19, Section 6 (Fugitive Operations Reporting Requirements)
to the Detention and Deportation Officer's Field Manual (DDFM)

The DDFM is changed to reflect the addition of Section 6, Chapter 19. Accordingly the DDFM is changed as follows:

19.6 Fugitive Operations Reporting Requirements

I. BACKGROUND

The Office of Detention and Removal Operations (DRO) is responsible for reporting on its efforts in identifying, apprehending and removing aliens defined as fugitives. In the past, the Deportable Alien Control System (DACS) was the sole source of statistical data used in reporting the efforts of the National Fugitive Operations Program (NFOP). Following September 11, 2001, requests for information not readily available from DACS required the creation of a 'snapshot' database that would provide the information requested. DACS' lack of programming flexibility also did not allow it track a specific operation without a programming change. Finally, DACS' programming limitation does not allow for the type of case management and statistical reporting that is required during an investigation.

II. POLICY

Offices with Headquarters (HQDRO) designated FOTs or with full-time FOD designated FOTs shall use the (b)(7)(E) for case management. Information on how (b)(7)(E) will be used for case management will be

~~FOR OFFICIAL USE ONLY~~
~~LAW ENFORCEMENT SENSITIVE~~

added to this manual after it is published by Investigations. In addition, all offices shall maintain DACS in the highest possible state of accuracy. Furthermore, all Field Offices conducting fugitive operations shall report all apprehensions utilizing the Fugitive Operations Database within 24 hours of apprehension. Specific instructions for entering report information into the database will be issued at a later date as part of [REDACTED].

The Database will be compared to DACS every week on Thursday. Weekly reports will be generated for the Director, Office of Detention and Removal and the Assistant Secretary for Immigration and Customs Enforcement. Field Offices should regularly run the Error Report in the Database and correct listed errors or make appropriate notations in the Comments Section of the Database. The Chief of the Program Analysis and Information (PAI) Branch shall (in concert with the Fugitive Operations Branch Chief) maintain the Weekly Report Database and produce reports as requested by various HQDRO elements.

III. PROCEDURES

Offices with permanent FOTs (HQDRO or FOD designated) shall, as the first step in the fugitive operations process, ensure that DACS reflects that a targeted subject is a fugitive and is properly coded in DACS as either case category 5B, 8E or 8I. The General Assignment Deportation Officer, prior to turning the case over to the FOT, will conduct this review. The FOT case officer, as part of case preparation, shall also review the file and DACS to ensure that the case meets the definition of a fugitive. By ensuring that DACS is up to date, the integrity of reported data increases.

The FOT supervisor shall assign a case to a FOT case officer. (b)(7)(I) shall be the primary case management system for all full-time teams. Using (b)(7)(I) the FOT case officer shall maintain a record of his investigative efforts to locate his target.

The Fugitive Operations Database replaces all previous weekly reports. FOTs shall enter apprehensions into the Database within 24 hours. Weekly reports generated by the Database will reflect what is contained in the system from Thursday through Close of Business the following Wednesday.

Questions concerning reporting requirements shall be directed to the Chief, Fugitive Operations Branch via cc. Mail: FUGOPS HQDRO, which can be found in the address book as HQDRO, FUGOPS.

~~FOR OFFICIAL USE ONLY~~
~~LAW ENFORCEMENT SENSITIVE~~



U.S. Department of Homeland Security
Bureau of Immigration and Customs Enforcement

HQDRO 50/12 8

Office of the Director

801 I Street NW
Washington, DC 20536

September 3, 2003

MEMORANDUM FOR ALL FIELD OFFICE DIRECTORS
DEPUTY ASSISTANT DIRECTOR FOR FIELD OPERATIONS

FROM: 
Anthony S. Tangeman
Director
Office of Detention and Removal

SUBJECT: Addition of Chapter 19, Section 8 (Prosecutions) of the Detention and
Deportation Officer's Field Manual (DDFM)

The DDFM is changed to reflect the addition of Section 8, Chapter 19 (Prosecutions).
Accordingly the DDFM is changed as follows:

19.8 Prosecutions

I. POLICY

Officers shall review and select cases for prosecution under Title 8 USC. In making the determination whether to prosecute a case or not, officers will be guided by ~~Chapter 20.9~~ of the *Detention and Deportation Officer's Field Manual (DDFM)*. A legal opinion on the exercise and limitations on prosecutorial discretion is found in the *Special Agent's Field Manual (SAFM)* in ~~Appendix A.15~~. Additional guidance can be found in the Commissioner's memorandum dated November 17, 2000, which can be found in the SAFM's ~~Appendix A.15~~.

II. DISCUSSION

Deportation officers have the necessary authority, by law, to present violators of the Immigration and Nationality Act (INA) for prosecution. Additionally, they have the authority to prosecute for other than intrinsically INA violations when it deals with violations against the officers themselves. However, officers must understand that the primary mission of the National Fugitive Operations Program is not to punish fugitives

for violating the INA, but to arrest and remove them from the United States pursuant to law. Given the fact that some violations are more egregious and may be compounded by other facts, prosecution is still a necessary tool for the officer and should be pursued as appropriate. Supervisors shall determine if D&R officers should pursue prosecution.

Attorney General John Ashcroft recently sent a memorandum to all United States Attorneys regarding the issue of, "Litigation involving detention of aliens with final orders of removal." That memorandum provides, in part:

Now that the Supreme Court's decision in Zadvydas has focused attention on the length of time it takes to remove aliens, it is particularly important that aliens be deterred from obstructing efforts to remove them. It is a criminal offense to fail to seek to comply with a removal order or to prevent removal or to refuse to cooperate with the INS to obtain travel documents. 8 U.S.C. §1253(a)(1). Such practices cannot be tolerated. Accordingly, INS prosecution recommendations under this provision should be given high priority.

The Supreme Court's decision in Zadvydas will inevitably result in the release of some aliens previously determined to pose a risk to the community or of flight. Those aliens should be released under an INS order of supervision. It is a criminal offense to violate an order of supervision. 8 U.S.C. §1253(b). Violating an INS order of supervision is a serious offense, and INS Prosecution recommendations in this area also should be given high priority.

Officers within D&R, again, have the authority to pursue many different violations. However, for the purpose of this chapter DRO officers will concentrate on only three primary violations:

- Title 8 United States Code, Section 1253(a);
- Title 8 United States Code, Section 1253(b); and,
- Title 8 United States Code, Section 1326.

Pre-prosecution groundwork with the local United States Attorney (USA) or Special Assistant United States Attorney (SAUSA) will provide the necessary guidance for creation of the officer's affidavit in support of the criminal complaint. Officers are to ensure that all elements of the violation they are charging the subject with are documented in their affidavit. The below listed sections are provided as a guide to assist in the successful prosecution of these violations.

Officers processing any alien who is being anticipated for prosecution should complete, in addition to completing all the normal processing as set forth in Interim Enforcement Procedures – *Standard Operating Procedures for Enforcement Officers: Arrest, Detention, Processing and Removal*, a Form ~~231~~ (Warning of Rights) should also be completed.

In the event an alien (fugitive or not) indicates that they will attempt to hamper their removal by any action contrary to the statute in section 243(a), the officer should take the steps to document their notification that such actions are, in fact, violations of the INA. This documentation could be a Memorandum to File or on a G-166C. The alien should be served a **Form 10-229(a)** that should be placed in their A-file. The alien should be provided a signed copy.

Additionally, any alien who is being released on an Order of Supervision, pursuant to the decision in *Zadvydas*, should be served with a **Form 10-229(b)** prior to release. This documents the alien's notification that failure to adhere to the requirements of the order of supervision is a violation of section 243(b) of the INA. Without such notification it may be literally impossible to prosecute an alien under this section. This form should also be placed in the alien's A-file.

Sections of Title 8 Applicable to Fugitives

Title 8 United States Code, Section 1253(a) (Section 243 of the INA)

(a) Penalty for Failure to Depart

(1) In general

Any alien against whom a final order of removal is outstanding by reason of being a member of any of the classes described in section 237(a), who—

(A) willfully fails or refuses to depart from the United States within a period of 90 days from the date of the final order of removal under administrative processes, or if judicial review is had, then from the date of the final order of the court,

(B) willfully fails or refuses to make timely application in good faith for a travel or other documents necessary to the alien's departure,

(C) connives or conspires, or takes any other action, designed to prevent or hamper or with the purpose of preventing or hampering the alien's departure pursuant to such, or

(D) willfully fails or refuses to present himself or herself for removal at the time and place required by the Attorney General pursuant to such order,

shall be fined under title 18, United States Code, or imprisoned not more than four years (or 10 years if the alien is a member of any of the classes described in paragraph (1)(E), (2), (3), or (4) of section 237(a)), or both.

ELEMENTS

1. The defendant;
2. Is an alien;
3. Final order is outstanding;
4. Defendant is a member of the classes described in section 1227(a); and,
 - A. Willfully fails or refuses to depart within 90 days;
 - B. Willfully fails or refuses to make timely application for travel documentation;
 - C. Connives or conspires to prevent or hamper departure; or,
 - D. Willfully fails or refuses to present himself for removal.

SATISFACTION OF THE ELEMENTS

1. The defendant;
2. Is an alien;
3. Final order is outstanding;
4. Defendant is a member of the classes described in section 1227(a); and,
 - A. Willfully fails or refuses to depart within 90 days:
 - Proof of service of letter or document from ICE to alien detailing penalties and sanctions available for actions that violate section 243(a) of the Act
 - B. Willfully fails or refuses to make timely application for travel documentation;
 - Testimony of Deportation Officers attempting to work with defendant to obtain travel documents
 - Proof of service of letter or document from ICE to alien detailing penalties and sanctions available for actions that violate section 243(a) of the Act
 - Any documents the alien was required to sign wherein he refused
 - In the event the alien requests release from detention (based on his or her belief that there is no significant likelihood that he or she will be removed in the reasonably foreseeable future), and request is denied by ICE for lack of compliance or failure to cooperate:
 - Documentation submitted by alien in support of written request for release, wherein he or she details his or her efforts to comply with the obligation to effect his or her removal and cooperation with the process of obtaining necessary travel documents
 - ICE response to request, detailing efforts alien needs to make or what he or she should do in order to assist in securing travel documents, as well as consequences of failure to make such efforts or to cooperate
 - Alien's response to ICE response

- C. Connives or conspires to prevent or hamper departure:
- Testimony of deportation officers attempting to effectuate removal of defendant
 - Proof of service of letter or document from ICE to alien detailing penalties and sanctions available for actions that violate section 243(a) of the Act
 - Any documents the alien was required to sign wherein he refused
 - In the event the alien requests release from detention (based on his or her belief that there is no significant likelihood that he or she will be removed in the reasonably foreseeable future), and the request is denied by ICE for lack of compliance or failure to cooperate:
 - Documentation submitted by alien in support of written request for release, wherein he or she details his or her efforts to comply with the obligation to effect his or her removal and cooperation with the process of obtaining necessary travel documents
 - ICE response to request, detailing efforts alien needs to make or what he or she should do in order to assist in securing travel documents, as well as consequences of failure to make such efforts or to cooperate
 - Alien's response to ICE response
- D. Willfully fails or refuses to present himself for removal:
- Testimony of deportation officers regarding alien's failure to appear
 - Proof of service of letter or document from ICE to alien detailing penalties and sanctions available for actions that violate section 243(a) of the Act
 - Proof of service of Form I-166, notifying alien to appear for deportation.

DETAILED GUIDANCE

Collateral attack of underlying deportation order. For an alien to collaterally attack his underlying deportation order in a 243(a) prosecution, he must show that (1) defects in the underlying deportation proceeding violated his due process rights, and (2) he was prejudiced by the defects. To show that the proceedings violated his due process rights, the alien must show that they were fundamentally unfair and that he was prohibited from reasonably presenting a case. The failure of his attorney to submit an appeal brief to the BIA may, in the deportation case, amount to a due process violation. But, the alien must also show resulting prejudice. To do this, he must show possible grounds of relief for which he might have been eligible had he not been deprived of his rights. An attorney's failure to notify the alien of a BIA decision in his case is not a violation of the alien's due process rights. United States v. Ayeni, 66 F.Supp.2d 617 (M.D. Pa. 1999).

Title 8 United States Code, Section 1253(b) (Section 243 of the INA)

(b) Willful Failure to Comply with Terms of Release Under Supervision

An alien who shall willfully fail to comply with regulations or requirements issued pursuant to section 241(a)(3) or knowingly give false information in response to an inquiry under such section shall be fined not more than \$1,000 or imprisoned for not more than one year or both.

ELEMENTS

1. The alien
2. A. Willfully fails to comply with regulations or requirements issued pursuant to section 241(a)(3); or,

B. Knowingly gives false information in response to an inquiry under section 241(a)(3)

SATISFACTION OF THE ELEMENTS

1. The alien
2. A. Willfully fails to comply with regulations or requirements issued pursuant to section 241(a)(3):
 - Testimony of Deportation Officer that alien failed to report periodically for identification as required by order of supervision
 - Proof of service of letter or document from ICE to alien detailing penalties and sanctions available for actions that violate section 243(b) of the Act
- B. Knowingly gives false information in response to an inquiry under section 241(a)(3):
 - Evidence that alien provided false address upon or after release:
 - Testimony of Deportation Officers
 - Documentation completed by alien upon release which includes address given by alien
 - Form AR-11 completed by alien for change of address
 - Evidence of alien's correct address
 - Proof of service of letter or document from ICE to alien detailing penalties and sanctions available for actions that violate section 243(b) of the Act.

Title 8 United States Code, Section 1326 (Section 276 of the INA)
--

(a) Subject to subsection (b), any alien who—

(1) has been denied admission, excluded, deported, or removed, or has departed the United States while an order of exclusion, deportation, or removal is outstanding, and thereafter

(2) enters, attempts to enter, or is at any time found in, the United States, unless (A) prior to his embarkation at a place outside the United States or his application for admission from foreign contiguous territory, the Attorney General has expressly consented to such alien's reapplying for admission; or (B) with respect to an alien previously denied admission and removed, unless such alien shall establish that he was not required to obtain such advance consent under this or any prior Act, shall be fined under title 18, United States Code, or imprisoned not more than 2 years or both.

(b) Notwithstanding subsection (a), in the case of any alien described in such subsection—

(1) whose removal was subsequent to a conviction for commission of three more misdemeanors involving drugs, crimes against the person, or both, or a felony (other than an aggravated felony), such alien shall be fined under title 18, United States Code, imprisoned not more than 10 years, or both;

(2) whose removal was subsequent to a conviction for commission of an aggravated felony, such alien shall be fined under such title, imprisoned not more than 20 years, or both. For the purpose of this subsection, the term "deportation" includes any agreement in which an alien stipulates to deportation during a criminal trial under either Federal or State law;

(3) who has been excluded from the United States pursuant to section 235(c) because the alien was excludable under section 212(a)(3)(B) or who has been removed from the United States pursuant to the provisions of title V, and who thereafter, without the permission of the Attorney General, enters the United States, or attempts to do so, shall be fined under title 18, United States Code, and imprisoned for a period of 10 years, which sentence shall not run concurrently with any other sentence. [sic] or

(4) who was removed from the United States pursuant to section 241(a)(4)(B) who thereafter, without permission of the Attorney General, enters, or attempts to enter, or is at any time found in the United States (unless the Attorney General has expressly consented to such alien's reentry) shall be fined under title 18, United States Code, imprisoned for not more than 10 years, or both.

For the purpose of this subsection, the term "removal" includes any agreement in which an alien stipulates to removal during (or not during) a criminal trial under either Federal or State law.

(c) Any alien deported pursuant to section 242(h)(2) who enters, attempts to enter, or is at any time found in, the United States (unless the Attorney General has expressly consented to such alien's reentry) shall be incarcerated for the remainder of the sentence of imprisonment which was pending at the time of deportation without any reduction for parole or supervised release. Such alien shall be subject to such other penalties relating to the reentry of deported aliens as may be available under this section or any other provision of law.

(d) In a criminal proceeding under this section, an alien may not challenge the validity of the deportation order described in subsection (a)(1) or subsection (b) unless the alien demonstrates that—

(1) the alien exhausted any administrative remedies that may have been available to seek relief against the order,

(2) the deportation proceedings at which the order was issued improperly deprived the alien of the opportunity for judicial review; and,

(3) the entry of the order was fundamentally unfair.

ELEMENTS

1. The defendant
2. Is an alien
3. Who has been
 - A. Arrested and deported,
 - B. Excluded and deported, or
 - C. Removed
4. Thereafter either
 - A. Enters the United States
 - B. Attempts to enter the United States, or
 - D. Is at any time found in the United States.
5.
 - A. Prior to his removal, or
 - B. Prior to his application for admission from a foreign contiguous territory,
6. The alien did not obtain (or receive) the consent of the Attorney General to reapply for admission.

ADDITIONAL ELEMENT REQUIRED BY SOME COURT'S IN CASES WHERE THE DEFENDANT IS TO BE CHARGED WITH A PRIOR FELONY OR AGGRAVATED FELONY TO INCREASE THE SENTENCE.

7. The defendant was convicted of:
 - A. A felony, or
 - B. An aggravated felony
8. The deportation was subsequent (after) in time to the conviction.

A NOTICE OF SENTENCING ENHANCEMENT MAY BE REQUIRED AS AN ALTERNATIVE TO ELEMENT #7.

DETAILED GUIDANCE

While some jurisdictions treat the increased punishment for re-entering criminals as a sentencing enhancement that does not belong in the indictment and is not an element of the offense, other courts treat it as an element of the offense. When it is treated as an enhancement, the defendant must be given notice of the enhancement after the grand jury returns the indictment and prior to a plea. If it is treated as an element, the prior conviction must be in the indictment. As of November 1993, the Fifth Circuit considers subsection (b) an enhancement aspect of the statute. U.S. v. Vasquez-Olvera, 999 F.2d 943 (5th Cir. 1993); U.S. v. Martinez-Corte, 988 F.2d 1408 (5th Cir. 1993). The Ninth Circuit considers it an element. U.S. v. Campos-Martinez, 976 F.2d 589 (9th Cir. 1992). The Eleventh considers it an enhancement. U.S. v. Adeleke, 968 F.2d 1159 (11th Cir. 1992). In Rhode Island it is an element. U.S. v. Vieira-Candelario, 811 F.Supp. 762 (D. R.I. 1993). Elsewhere, no published cases have been identified, therefore, elsewhere it is treated as an enhancement pursuant to the United States Attorney Bulletin of July 15, 1991, pg 189 requesting it to be treated as an enhancement.

AFFIRMATIVE DEFENSE

With respect to an alien previously excluded and deported, he may establish that he was not required to obtain such advanced consent under this or any prior Act.
8 USC § 276(a)(2)(B).

While the government does not need to prove the defendant specifically intended to violate 8 USC § 1326, the government must establish a general intent on the part of the defendant. U.S. V. Espinoza, 873 F.2d 743 (4th Cir. 1989); U.S. v. Anton, 683 F.2d 1011 (7th Cir 1982); U.S. v. Hussein, 675 F.2d 114 (6th Cir, 1982).

The elements are arrest, deportation, re-entry and lack of attorney general permission.
U.S. v. Vasquez-Olvera, 999 F.2d 943 (5th Cir. 1993).

Illegal re-entry is not required to establish "found in." U.S. v. Gay, 7 F.3d 200 (11th Cir. 1993).

SATISFACTION OF THE ELEMENTS

1. Identifying the defendant:
 - Fingerprints;
 - Admissions of the defendant optional;
 - Information from the case officer requiring testimony, optional;
 - Personal identification (e.g., passport, drivers license, etc.), optional;
 - Photos of the defendant, requiring witness testimony making identification, optional; or,
 - Scars and other identifying marks requiring testimony of witnesses making identification, optional.
2. Is an alien:
 - Documents in A-file (e.g., I-213, I-214, etc.);
 - Various ICE and other law enforcement data bases;
 - Personal identification (e.g., passport, drivers license, etc.) May require expert testimony of the arresting officer; or,
 - Admissions of the defendant.

Note: A finding by an immigration judge is not conclusive proof of alienage due to lower burden. U.S. v. Meza-Soria, 935 F. 2d 166 (9th Cir. 1991). If the A-file does not have a document signed by the alien that proves alienage and there is no admission through a statement or I-213, the officer needs to begin to acquire foreign records of birth, a passport, military service records or some other formal document that can be positively tied to the defendant and proves his place of birth.

3. Who has been:
 - A. Arrested and Deported (include deportation pursuant to section 217 of the Act, with respect to Visa Waiver Program):
 - I-221- OSC / I-862 – NTA / I-860 – Notice and Order of Expedited Removal;
 - I-213, Record of Deportable Alien;
 - I-205, Warrant of Deportation or I-296, Notice to Alien Ordered Removed, containing fingerprint of the alien and signatures of the alien and ICE officer effecting the deportation; (**Note: The signature of a contract guard does not satisfy the ICE officer signature requirement.**);
 - I-294, Advisal of penalty for reentry or I-296 (helpful in proving knowledge of the violation);

- Copy of the final order, either from the immigration judge, BIA or circuit court decision;
- Fingerprint comparison between the one on the I-205 and a known print of the defendant (Requires testimony of a fingerprint expert.);
- Copy of the tape from the deport/exclusion hearing (**Required to defend against expected challenges to the due process of the deportation.**);
- Affidavit from the ICE officer who read the deport order to the alien. (**Required that the officer be interviewed prior to presentation of the case.**);
- Affidavit from the ICE officer who witnessed the deportation of the alien. (**Required that the officer be interviewed prior to presentation of the case.**)(**Testimony will be required at the trial.**)

B. Excluded and Deported (includes exclusion pursuant to section 217 of the Act):

- I-110 and I-122, optional;
- I-213, optional;
- I-296, Notice to Alien Ordered Excluded by Immigration Judge with fingerprint of alien and signatures of alien and ICE officer, (**Required**);
- Immigration Judge decision. If not final, copies of the BIA decision and/or circuit court decision. Certified copies preferred, but since ICE was a party to the proceedings and received a copy as a party, many courts treat the copy in the A-file as an official record during normal ICE business. (**Required**);
- Copy of the tape from the deport/exclusion hearing. Obtained from EOIR by written request for tape and cover letter from EOIR custodian of the records. (**Required to defend against expected challenges to the due process of the deportation.**);
- Fingerprint comparison between known print and the print of the I-296. Testimony of the fingerprint expert. (**Required**);
- Affidavit from ICE officer who read the exclusion order to the alien. (**Required that the officer be interviewed prior to presentation of the case.**);
- Affidavit from ICE officer who witnessed the exclusion of the alien. (**Required that the officer be interviewed prior to presentation of the case.**)(**Testimony will be required at the trial.**)

Note: If the I-205 or the I-296 is not signed by the FOD the case will require a sworn affidavit or memo showing that the person who signed the document had authority to do so. Do not include as an exhibit unless the defendant raises it as a defense.

4. Thereafter either
 - A. Enters (If unable to prove time, place and manner of entry, go to Part C below for prosecution under "found in." Even in cases where the entry can be proven, "found in" is an easier case to prove because it only depends on the officer's testimony that first "found" the alien in the United States.)
 - Admission by the defendant **(Requires the testimony of the officer who took the statement)**;
 - I-213, Record of Deportable Alien **(Requires the testimony of the officer who completed the form)**;
 - Passport with admission stamp **(Requires the testimony of the officer who seized the document)**; or,
 - Additional optional records: Customs declaration, foreign documents showing alien in foreign country, CIS, (b)(7)(E) **(Also requires testimony.)**
 - B. Attempts to enter: Defendant apprehended at border. **(Testimony of arresting officer or secondary inspector who made the decision not to admit the defendant.)**
 - C. At any time is found in the United States: Statement from the arresting officer, surveillance officer or ACAP officer who interviewed the defendant in jail. **(Testimony of the officer is required.)** **Note:** Use this charge if unable to establish time, place and manner of entry. Also it is easier to prove if the entry was not witnessed. Instead of proving a past event that was not witnessed by an officer, an officer can easily testify as to where he found the defendant.
5.
 - A. Prior to his removal, or
 - B. Prior to his application for admission from a foreign contiguous territory, the alien did not seek or obtain the consent of the Attorney General to reapply for admission: Certification from Headquarters of non-existence of records. Written certification should be ordered immediately upon authorization of the case, but verbal affirmation should be noted in the case report.

FOR SENTENCE ENHANCEMENT PURPOSES

In jurisdiction where the prior conviction is an enhancement factor, the burden of proof should be lower because the issue is a sentencing factor. In courts where the prior conviction is an element of the offense, the agent **will** be required to prove the conviction relates to the defendant beyond a reasonable doubt.

6. The defendant was convicted of:
 - A. A felony, or,
 - B. An aggravated felony.
 - Certified copies of judgment and conviction (J&C) documents;
 - Connect J&C to the defendant; and,
 - Fingerprint analysis between known prints and conviction prints. ***(Requires testimony of fingerprint expert.)***
 - Photos from A-file and criminal file ***(Requires testimony of identifying custodian of records.)***
 - Police reports ***(Requires testimony of reporting officer.)***
 - NCIC/NLETS ***(Requires testimony of custodian of records)***
 - If alien was originally deported for the crime in question, use OSC/NTA and IJ decision.
7. Deportation was subsequent in time to the conviction.

SPECIAL SITUATION

For information on absentia deport orders and/ or where the alien self-deports, see Section 101(a) of the Act. Self-deportations will not result in an "arrest and deportation" as required by the statute. U.S. v. Wong Kim Bo, 466 F.2d 1298 (5th Cir. 1972). In cases where the deportation order was granted in absentia, the only concern is the alien's knowledge of his order, but that is established through the arrest and deport. The standard challenge in re-entry cases is to attack the IJ's order as being invalid for lack of due process. Most often the courts want to know if the defendant had the opportunity for judicial review of his deportation proceedings.

III. PROCEDURE

Preparing for Prosecution

The below steps have been designed around a prosecution for a re-entry violation (8 USC 1326). However, the steps should be the same for any prosecution attempted. Review the process and check with your U.S. Attorney's Office or district counsel [if they are designated Special Assistant U.S. Attorney (SAUSA)] to determine if this meets or exceeds your district requirements and adjust your process accordingly.

- 1) Print Prosecution Check Sheet (based on requirements listed below)
- 2) Review the file for elements of the crime
 - a) Subject is an Alien
 - b) Subject was deported as an Aggravated Felon.
 - c) Subject was found in the US subsequent to the removal
 - d) Subject did not receive permission to reenter the US
- 3) Run and print NCIC report on subject.
- 4) From the FBI, order fingerprint cards on the arrests.
- 5) Prepare Request for Nonexistence of Record and fax to the Records Certification Unit. Mark it with Return Receipt. (See example ~~Appendix 19.42~~)
- 6) Verify there are certified copies of the convictions in the file. The only necessary records are the ones that made the subject an Aggravated Felon.
- 7) If the records are not in the file, order them. It may require contacting the court clerks and requesting a certified copy.
- 8) Prepare Fingerprint Certification.
- 9) Make copies of Exhibit Documents
 - a) Reinstatement
 - b) Sworn Statement
 - c) All I-213s
 - d) Executed Warrant of Removal
 - e) IJ Order or Admin Deport Order
 - f) OSC/NTA or Notice of Admin Deport
 - g) Copy of J&Cs
 - h) Fingerprint Certification
 - i) Request for Certificate of Nonexistence of Record
 - j) Any other supporting documents or documents that may enhance the sentencing
- 10) Sort the exhibits in descending order and label.
- 11) Prepare Index of Exhibits
- 12) Prepare Prosecution Report. (~~Form 1326~~)
- 13) Make three (3) copies of the *Index of Exhibits* and all the *exhibits*
 - a) for AUSA
 - b) for Defense
 - c) for ICE (A-File) file

- 14) Make copies for ICE file
 - a) NCIC printout
 - b) Cover Memo to AUSA
 - c) Prosecution report
- 15) Prepare Criminal Complaint, Arrest Warrant and Affidavit. (See samples Appendix A, B, C)
- 16) Prepare Detainer, 247.
- 17) Prepare Marshals Arrest Sheet. Attach a copy of the:
 - a) signed Complaint
 - b) signed Arrest Warrant
 - c) Detainer
 - d) Have the deputy sign receipt for the detainer
- 18) Prepare Pre-trial Services Worksheet. Attach a copy of the:
 - a) signed Complaint
 - b) signed Arrest Warrant
 - c) Detainer

Ready for Prosecution

- 1) Case to AUSA to initial the Complaint.
- 2) Case to US Magistrate Judge to sign the Complaint, Affidavit and Warrant
 - ✓ Court clerk will instruct you to make copies of the package
 - ✓ Make an additional three (3) copies, one each for:
 - a) our records (have this one certified by the court clerk)
 - b) Marshals
 - c) Pre-trial
- 3) To Marshals
 - a) Marshals Arrest Sheet
 - b) Detainer
 - c) Copy of Complaint
 - d) Copy of Warrant
- 4) To Pre-trial Services
 - a) Pre-trial Services Worksheet
 - b) Detainer
 - c) Copy of Complaint
 - d) Copy of Warrant
- 5) Fax I-203 to Detention to transport subject to the Marshals

Memorandum for Distribution
Subject: Addition of 19.8 to DDFM

Page 16

Testifying

While many cases are settled prior to a trial date, officers have to be prepared to testify in federal court. A useful guide for conducting yourself during your court appearance is contained in ~~Appendix B.2~~ of the *Inspector's Field Manual*.

Chief, Fugitive Operations Branch shall be responsible for updating/changing this section as required.



U.S. Department of Homeland Security
Bureau of Immigration and Customs Enforcement

HQDRO 50/12.8

Office of the Director

801 I Street NW
Washington, DC 20536

MEMORANDUM FOR ALL FIELD OFFICE DIRECTORS
DEPUTY ASSISTANT DIRECTOR FOR FIELD OPERATIONS

FROM: 
Anthony J. Tangeman
Director
Office of Detention and Removal

SUBJECT: Addition of Chapter 19, Section 9 [Bureau of Immigration and Customs Enforcement (ICE) Most Wanted Program] of the Detention and Deportation Officer's Field Manual (DDFM)

The DDFM is changed to reflect the addition of Section 9, Chapter 19 [Bureau of Immigration and Customs Enforcement (ICE) Most Wanted Program]. Accordingly, the DDFM is changed as follows:

19.9 Bureau of Immigration and Customs Enforcement (ICE) Most Wanted Program

L. POLICY

All Field Offices shall create Wanted Posters for aliens designated as fugitives.  contains information on how to complete a Wanted Poster. Only the Wanted Poster () authorized by Headquarters, Fugitive Operations Branch (HQFOB) and Regulations and Forms Services Division is authorized for use. No changes or deviations are to be made to this form. Earlier formats and locally customized formats are no longer authorized. The only 'Most Wanted' Poster authorized is the ICE Most Wanted Program administered by HQFOB. Field Offices desiring to nominate a target for inclusion to the 'Most Wanted' program should forward a copy of the target's folder to HQFOB.

~~FOR OFFICIAL USE ONLY~~
~~LAW ENFORCEMENT SENSITIVE~~

II. GENERAL PROCEDURES

The purpose of creating and distributing "wanted posters"¹ relating to targeted fugitive aliens is to ensure the greatest likelihood of locating and apprehending these aliens. The use of wanted posters is a *proactive* approach in conducting fugitive operations as opposed to placing cases into the NCIC system, which is *reactive* in nature. However, both should be used when conducting fugitive operations. It is recommended that wanted posters only be used in cases that are actually being worked, as they can be distributed to the appropriate agencies as the case continues to progress and additional leads and information are developed. When starting to work the case, verification should be made that it has been entered into NCIC. This is important so that any contact between the absconder and another Law Enforcement Agency (LEA) can lead to apprehension for or by ICE.

Distribution

Copies of wanted posters should be distributed to various federal, state and local law enforcement agencies, as well as, other agencies such as the department of motor vehicles, parole and probation offices, bank security divisions and any other agency which may be of assistance. Examples of other agencies and/or entities are correctional facilities, District Attorney's offices, state insurance fraud bureaus, and state bureaus of special investigations, airline security divisions and Confidential Informants².

Distribution List

The following is a list of agencies with a brief description of how the particular agency may be of assistance with this program in a FOT's jurisdiction. It is important that, practical, personal liaison be established with "key" personnel assigned to each agency where wanted posters are distributed in your jurisdiction, along with a brief explanation of the ICE's mission. One of the most important points to stress is that these fugitives have already completed the hearing process and have outstanding Warrants of Deportation/Removal, which means their removal can be expeditiously accomplished subsequent to apprehension. This will increase the likelihood of other agencies proactive participation and assistance in attempts to locate wanted fugitives. It should also be explained that these cases have been entered into NCIC, if applicable. Distribution of wanted posters should be limited to fugitive cases in your operational area.

When a fugitive is apprehended, it is important to contact the personnel that you previously made contact with in order to make them aware of the apprehension. This

¹ "Wanted Posters" have been around as long as there have been criminals. Indeed early U.S. Marshals used wanted posters to spread information about fugitives. As time went by sketches and eventually photographs were attached. The modern success stories in poster programs are the FBI's Top Ten and the Marshals Service Top 15 Program.

² If the decision is made to provide a copy of a "wanted Poster" to a Confidential Informant, they should be warned to keep them in a secure location.

~~FOR OFFICIAL USE ONLY~~
~~LAW ENFORCEMENT SENSITIVE~~

can be easily accomplished by listing these agency personnel as "leads" on form G-176 during the course of your fugitive investigation. This will save these agencies unnecessary time and effort attempting to locate the fugitive for ICE and will enhance the rapport between agencies.

Oftentimes, when conducting liaison with personnel from other law enforcement agencies, the question is asked by what authority they can apprehend ICE fugitives. It is recommended that ICE personnel instruct them to consult with their own legal department regarding this matter. Advise them that ICE is only seeking information that they may be able to provide as to the whereabouts of wanted ICE fugitives.

FEDERAL AGENCIES

U.S. DEPARTMENT OF HOMELAND SECURITY

Wanted posters should be distributed to the various agencies or bureaus that make up the Department of Homeland Security. A partial list of these agencies and bureaus includes:

- Bureau of Immigration and Customs Enforcement, Office of Investigations
- Transportation Security Administration
- Federal Air Marshals
- Office of Air and Marine Interdiction (ICE)
- Federal Protective Service³
- Bureau of Customs and Border Protection (Inspections)
- U.S. Border Patrol
- United States Secret Service
- Bureau of Citizenship and Immigration Services

U.S. Passport Office/Bureau of Diplomatic Security⁴

Wanted posters may be distributed to the local office in the event the alien attempts to obtain a U.S. passport. This has proven to be extremely helpful when dealing with fugitives using fraudulent Puerto Rican birth certificates as proof of citizenship.

Drug Enforcement Administration (DEA)

³ HQ Fugitive Operations Branch (FOB) is currently working with FPS. The "Most Wanted" poster is distributed in their daily newsletter

⁴ Should problems arise, contact HQFOB.

~~FOR OFFICIAL USE ONLY~~
~~LAW ENFORCEMENT SENSITIVE~~

Because most of the wanted posters contain information relating to convicted drug traffickers, it is possible that DEA may have information on their whereabouts. DEA may also have ongoing investigations relating to these individuals, which may prove to be of interest in the area of officer safety. Additionally, these individuals may be acting as Confidential Informants for DEA. *Although ICE is sometimes aware of this information, this is not always the case.*

Internal Revenue Service (IRS)

The amount of information that the IRS can provide is very limited due to disclosure constraints. Virtually no information can be provided without a court order. However, IRS receives many anonymous calls from people who lodge complaints about aliens not paying taxes, which may prove to be beneficial.

Alcohol, Tobacco & Firearms (ATF)

Because many of the aliens wanted by ICE have been arrested and/or convicted of a firearm offense, it is possible that the local ATF office may have information on them. If you are attempting to locate an individual who is known or believed to carry firearms, ATF may provide an agent to assist with the apprehension, depending on the rapport that you have established with the local office. Additionally, if an ATF agent is working with you when an apprehension is made of an alien who has a firearm at the time of the arrest, ATF may want to take custody of the alien and prosecute him/her criminally. In those instances, you will need to lodge an ICE detainer (ICE 288-2) with the arresting agent or the U.S. Marshals Service.

U.S. Marshals Service

Many of the local U.S. Marshals offices have established Fugitive Units. If you receive information that a wanted ICE fugitive was on federal parole or probation and has violated that status, the U.S. Marshals may also be attempting to locate that individual. They may have useful information for ICE or ICE may have information useful to their case/operation.

Federal Bureau of Investigation (FBI)

Wanted posters may be distributed to local FBI Foreign Counter Intelligence and Drug Units⁵. The FCI Unit may be interested in aliens from hostile countries and may have information regarding them. The Drug Unit may have information on aliens involved in drug trafficking. Also, many FBI agents are assigned to various local, state and county task forces, and information/wanted posters should be provided to them. It is also important to contact the FBI regarding these cases as the FBI has a large network of Confidential Informants, some of which may be the targets of your investigation.

⁵ ICE Most Wanted Information will be sent from HQFOB. The Custody Review Unit (CRU), which is part of HQFOB, can assist by coordinating with ICE's National Security Unit (NSU).

~~FOR OFFICIAL USE ONLY~~
~~LAW ENFORCEMENT SENSITIVE~~

Contact should be made with the controlling FBI agent and local ICE management should also be apprised of the situation.

Department of Labor (DOL)

The DOL may be a useful point of contact as the fugitive may be receiving some form of workman's compensation, possibly as the result of an industrial accident. Also, the fugitive may be in the process of applying for certain benefits from the DOL.⁶

Social Security Administration (SSA)

The Social Security Administration can be an outstanding source of information in providing employer information relating to wanted fugitives. *Section 290 of the Immigration and Nationality Act requires that the SSA provide employer information to ICE when requested.*⁷

STATE/OTHER AGENCIES/ENTITIES

Bureau of Special Investigations (BSI)

Many states may have agencies such as these. In some states, the BSI provides information relating to individuals who are collecting state benefits such as welfare, unemployment, food stamps, etc. The BSI may provide personnel to assist by sending a "call-in" letter to the wanted fugitive in order to assist ICE in effecting their arrest. *It is important to remember that most drug dealers do not work and many are collecting state benefits!*

Financial/Insurance Fraud Associations

Some states have agencies that combat financial and insurance fraud. Many times these may be private agencies funded by state government. It is extremely important to initiate liaison with local personnel from these agencies, as they tend to have extensive financial and insurance related databases. You should remember that, quite often, their investigations involve aliens, and they may be in need of your assistance as much as ICE needs them.

State Police

Wanted posters should be provided to State Police Departments. They should be provided to both the uniformed and non-uniformed troopers (detectives). You should also find out if State Police officers are assigned to local drug task forces and provide

⁶ HQFOB is working with DOL to coordinate the exchange of information. HQFOB will send any information it receives to the field as 'Hot Leads'.

⁷ HQFOB is working with SSA to coordinate the exchange of information. HQFOB will send any information it receives to the field as 'Hot Leads'.

~~FOR OFFICIAL USE ONLY~~
~~LAW ENFORCEMENT SENSITIVE~~

them with information/wanted posters on ICE fugitives. When you provide copies of the wanted posters to the State Police, you should also include any known vehicles that the fugitives are known to use. This will assist the State Police in determining the identity of an individual or individuals in the vehicle.

Correctional Institutions

Wanted posters should be placed in all correctional facilities, including ICE Service Processing Centers, within your respective area of responsibility. The most effective area for placement would be the inmate processing area. It is particularly important that all aliases be noted on the wanted poster.

Department of Motor Vehicles (DMV)

In addition to information that DMVs can provide concerning aliens, they also can be another force multiplier in looking for a fugitive. Should the target not have a driver's license for his current residence⁶, providing a wanted poster to driver's license examiners or their investigative units could result in an easy apprehension.

Local Police Departments

Local police departments are probably the most useful of all agencies. You should always communicate with the detective units, however you may also want to communicate with the uniformed officers as well. When communicating with police departments, you must ensure that personnel on all shifts are aware of the information. The local police are more likely to come into contact with fugitives than any other agency and they have proven to be a necessary source of information. You should also find out if the department has its own drug unit and housing unit. Many fugitives are found residing in public subsidized housing and the housing police units can get information discreetly through local contacts. In large metropolitan areas, there may be transit police departments. Wanted posters should be given to these departments, especially if the fugitive does not possess a valid driver's license.

Probation Offices

When dealing with probation officers, you must remember that, unfortunately, some officers are sympathetic to their clients and may not provide you with as much information as you may like. In extreme circumstances, they may even contact the alien and inform them of ICE's interest. Experienced ICE officers will usually know the names and telephone numbers of reliable probation officers in the various district courts within their jurisdiction. Posters should only be placed with probation officers that you are sure will not alert the target to our interest.

⁶ Some power companies and agencies that provide financial assistance require proof of a local address.

~~FOR OFFICIAL USE ONLY~~
~~LAW ENFORCEMENT SENSITIVE~~

Local banks

Most banks have a Director of Security. Liaison should be initiated with these officials, as they are often helpful in providing account information. Security officers frequently meet at regularly scheduled intelligence conferences to discuss problems and concerns. Usually, ICE officers are welcome to attend these meetings and information/wanted posters can be circulated among the attendees.

Airline Security Divisions

Liaison should be established with airline security officials of airlines that have direct flights to countries that fugitives are likely to travel to. Wanted posters may be given to these officials, but these officials should be briefed of the restrictions and prohibitions contained in Section 215 of the Immigration and Nationality Act regarding the departure from the United States of certain classes of aliens.

Confidential Informants

The use of wanted posters with Confidential Informants can reap enormous results, however, a certain amount of caution must be used when doing so. Prior to allowing Confidential Informants to view Service wanted posters, you must be extremely confident in their ability and reliability. These may be Confidential Informants from ICE or other agencies. In any event, you should be thoroughly familiar with all ICE policies and regulations regarding their use. Once again, Confidential Informants should not be given a copy of the poster or if given one, warned to keep them in a secure location. See [REDACTED] - Confidential Informants.

CLOSING ACTIONS FOR FUGITIVES APPREHENDED USING WANTED POSTERS

Fugitive cases apprehended using a wanted poster should be immediately reported to all agencies/personnel on the wanted poster distribution list. This will foster good liaison and not waste the time of other agencies in looking for fugitives that have already been apprehended and removed. Also make sure that the case is removed from NCIC or transferred into the Deported Felon File (DFF), if applicable. TECS and DACS should be properly updated as well.

~~FOR OFFICIAL USE ONLY~~
~~LAW ENFORCEMENT SENSITIVE~~



U.S. Immigration
and Customs
Enforcement

MAY 20 2005

MEMORANDUM FOR:

(b)(6),(b)(7)(C)

FROM:

Acting Director

SUBJECT:

Addition of Chapter 19, Section 18, International Police
Organization (INTERPOL) of the Detention and Deportation
Officer's Field Manual (DDFM)

The DDFM is updated to reflect the addition of Section 18, Chapter 19. Accordingly, the DDFM is updated as follows:

19.18 International Criminal Police Organization (INTERPOL)

L Background

Headquarters, DRO has previously issued memoranda on the preparation of INTERPOL 'Green Notices'. Those memoranda are made a part of this Section of the DDFM. All DRO personnel regardless of assignment shall refer to this Section when performing activities related to INTERPOL.

INTERPOL maintains six color-coded notices and subject advisory notices (Appendix [REDACTED]). All notices and advisories are available to any of the over 180 member nations. However most distribution is limited to nations where the subject of the notice or advisory is likely to be encountered.

- o An INTERPOL Red Notice is used to seek the arrest with a view toward extradition of subjects wanted and based upon an arrest warrant.
- o An INTERPOL Blue Notice is used to collect additional information about a person's identity or illegal activities in relation to a criminal matter.
- o An INTERPOL Green Notice is used to provide warnings and criminal intelligence about persons who have committed criminal offences and are likely to repeat these crimes in other countries.
- o An INTERPOL Yellow Notice is used to help locate missing persons, especially minors, or to help identify persons who are not able to identify themselves.

www.ice.gov

~~FOR OFFICIAL USE ONLY~~
~~LAW ENFORCEMENT SENSITIVE~~

- o An INTERPOL Black Notice is used to seek the true identity of unidentified bodies.
- o An INTERPOL Orange Notice is used to warn police, public bodies and other international organizations of possible threats to them from hidden weapons, parcel bombs, and other dangerous items or material.

II. POLICY

INTERPOL

DRO personnel shall complete 'Green Notice' applications (Appendix ~~§ 2.14~~) as the situation dictates. Green Notice applications will be completed on those cases where the subject being removed is a registered sex offender and/or a known gang member whose "gang" conducts operations outside of the United States.

Blue Notice applications (Appendix ~~§ 2.15~~) will be completed in cases "to collect additional information about a person's identity or illegal activities in relation to a criminal matter".

Where DRO has developed information that a *non-criminal* fugitive alien has fled to a foreign country and we are seeking to confirm that the alien has departed the United States, a Request for Foreign Verification (RFV) (Appendix ~~§ 2.16~~), will be made to HQFUGOPS, electronically or via mail. HQFUGOPS will then utilize whatever resources available (Embassies, INTERPOL, etc.) and provide the requesting office with the information obtained.

The Chief, Fugitive Operations Unit has oversight responsibility for this program and will ultimately make the determination as to what applications will be forwarded to INTERPOL.

III. PROCEDURE

INTERPOL

When a Fugitive Operations Team¹ (FOT) uncovers information that a non-criminal alien fugitive may be outside of the United States, the team will complete a RFV (Appendix ~~§ 2.16~~) to determine if the fugitive is outside of the country and/or if the fugitive has committed criminal offenses in a foreign country. Upon receipt of information in response to this request the FOT shall take appropriate case action that may include but is not limited to:

- Closure of an open case
- Further leads concerning the alien's possible location inside or out of the U.S.
- Updating of DACS with any foreign criminal arrest or conviction information or any other pertinent information germane to the case

¹ In the context of Section 2, FOTs or DRO personnel who conduct fugitive operations are to be considered one in the same.

~~FOR OFFICIAL USE ONLY~~
~~LAW ENFORCEMENT SENSITIVE~~

The removing office will complete Green Notice applications (Appendix ~~(b)(6)~~) for Operation Predator (OPPED) aliens, more particularly those registered as sex offenders, as part of the preparation for the removal. It is important that fields such as the Summary of Facts of the Case be thoroughly, but briefly, answered. This field should put a summary of the facts of the case and not just the statute violated. Furthermore, the field should record where the subject is a registered sex offender and any offender number assigned. The application should be completed and forwarded as soon as possible (such as aliens for whom a Third Agency Check must be requested) but in no case later than the same day as the Request for Escorted Country Clearance (RECC) is made, if appropriate. If a RECC is not made, the Green Notice application will be completed and forwarded to HQ FUGOPS as soon as practical after removal.

Blue and Green Notice applications shall be forwarded either electronically to the HQFUGOPS mailbox or hard copy via FedEx to:

DHS/ICE/DRO
801 I Street, NW, Suite 930
Washington, DC 20536

ATTN: HQ FUGOPS/INTERPOL

Any questions regarding operational requirements should be directed to the INTERPOL Liaison Officer, Headquarters Fugitive Operations Unit through either the HQFUGOPS mailbox or at (202) 353-~~(b)(6)~~.

Any questions regarding this policy should be directed to ~~(b)(6), (b)(7)(C)~~ Chief, Headquarters Fugitive Operations Unit at (202) 353-~~(b)(6)~~.

~~FOR OFFICIAL USE ONLY~~
~~LAW ENFORCEMENT SENSITIVE~~



U.S. Department of Homeland Security
Bureau of Immigration and Customs Enforcement

HQDRO 50/12.8

Office of the Director

801 I Street NW
Washington, DC 20536

MEMORANDUM FOR ALL FIELD OFFICE DIRECTORS
DEPUTY ASSISTANT DIRECTOR FOR FIELD OPERATIONS

FROM: 
Anthony S. Tangeman
Director
Office of Detention and Removal

SUBJECT: Addition of Chapter 19, Section 12 (Tactical Communications) to the Detention
and Deportation Officer's Field Manual (DDFM)

The DDFM is changed to reflect the addition of Section 14, Chapter 19. Accordingly, the DDFM is changed as follows:

19.12 Tactical Communications

The Bureau of Immigration and Customs Enforcement (ICE) Communications Working Group is currently working to integrate all the various forms of radio communication into one accessible system. Upon completion of their work, this chapter will be used to implement the Policy and Procedure for Fugitive Operations Tactical Communications. Until then officers should refer to DDFM (Chapter 33 – *Communications Equipment*) for general information on radio communications and procedures.

~~FOR OFFICIAL USE ONLY~~
~~LAW ENFORCEMENT SENSITIVE~~



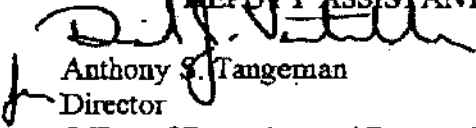
U.S. Department of Homeland Security
Bureau of Immigration and Customs Enforcement

HQDRO 50/12.8

Office of the Director

801 I Street NW
Washington, DC 20536

MEMORANDUM FOR ALL FIELD OFFICE DIRECTORS
DEPUTY ASSISTANT DIRECTOR FOR FIELD OPERATIONS

FROM: 
Anthony S. Tangeman
Director
Office of Detention and Removal

SUBJECT: Addition of Chapter 19, Section 14 [National Fugitive Operations Program Data Directory System (short title NFOP Directory or NOFPD) to the Detention and Deportation Officer's Field Manual (DDFM)]

The DDFM is changed to reflect the addition of Section 14, Chapter 19. Accordingly, the DDFM is changed as follows:

19.14 National Fugitive Operations Program Data Directory System (NFOPD)

I. DISCUSSION

The National Fugitive Operations Program Data Directory System (short title NFOP Directory or NFOPD) is designed to provide immediate and up to date contact information for all officers in the field who are directly or indirectly involved in fugitive operations. It is important to the mission of the NFOP that information concerning fugitives be passed to the officers who need it as fast as it can possibly be delivered. This can be especially important when the information is time sensitive.

The information contained in the directory was previously requested in the Director, Office of Detention and Removals' memorandum dated July 18, 2003. The directory is a part of the NFOP Web Page that can be found on the Intranet.

~~FOR OFFICIAL USE ONLY~~
~~LAW ENFORCEMENT SENSITIVE~~

II. POLICY

Field Office Directors (FODs) shall provide (and update as needed) the following information for all officers¹ assigned to or involved in fugitive operations:

1. Name:
2. Three letter office designation:
3. Office voice and facsimile numbers:
4. Cellular telephone number:
5. NEXTEL Direct Connect number²:

FODs shall designate a primary point of contact (POC) for each office location from his/her list of officers at that location. All officers listed are considered secondary POCs in the event the primary POC is unavailable.

The Chief, Fugitive Operations Branch is charged with maintaining the directory. Questions concerning this directory should be directed him at the FUGOPS HQDRO mailbox, which can be found in the cc: Mail directory at HQDRO FUGOPS.

III. PROCEDURE

FODs shall ensure that information for their offices is correct and updated as needed. Rotation or transfers of officers in and out of the Fugitive Operations Program shall be reported as soon as possible but in no case later than 10 business days. When a Field Office's data needs to be changed, the FOD will ensure it is updated by sending a cc: Mail message at: FUGOPS HQDRO.

¹ This includes component offices of a Field Office.

² If NEXTEL is your service provider.

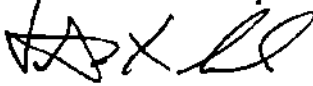
~~FOR OFFICIAL USE ONLY~~
~~LAW ENFORCEMENT SENSITIVE~~

DEC 10 2004



U.S. Immigration and Customs Enforcement

MEMORANDUM FOR: All Field Office Directors
Deputy Assistant Director for Field Operations

FROM: Victor X. Cerda 
Acting Director

SUBJECT: Addition of Chapter 19, Section 16 (Fugitive Operations Training Requirements) of the Detention and Deportation Officers Field Manual (DDFM)

The DDFM is changed to reflect the addition of Section 16, Chapter 19. Accordingly the DDFM is changed as follows:

19.16 Fugitive Operations Training Requirements

POLICY

Effective immediately, all National Fugitive Operations Program (NFOP) teams are required to receive training necessary to accomplish their mission. Each team has a two year window from the date of their creation, and for those currently in place from the date of the issuance of this policy, to complete the below listed required training

THE REQUIRED TRAINING IS AS FOLLOWS:

Basic Fugitive Operations Training Program (FOTP) All Officers¹
Basic First Aid and Cardio Pulmonary Resuscitation² All Officers

Team supervisors are required to maintain the training records of each officer and are to ensure that each officer is qualified as required above. Team supervisors are also to ensure that officers are re-certified in Basic First Aid and Cardio Pulmonary Resuscitation in a timely manner. Furthermore, they are required to make sure training is updated in that particular officer's training record (currently using ONTRACK).

¹ This includes supervisory deportation officers, deportation officers and immigration enforcement agents assigned as NFOP team members.

² Memorandum titled Basic First Aid and Cardio Pulmonary Resuscitation (CPR) Training of Fugitive Operations Team Members, dated December 3, 2003, remains in effect.

Team supervisors are encouraged to seek outside training with other law enforcement entities relating to the fugitive operation mission, however; all outside training must be approved by HQFOU.

PROCEDURE

FOTP training is coordinated through the Office of Detention and Removal Operations' (DRO) Division of the ICE Academy at the Federal Law Enforcement Training Center. The ICE Academy will notify the field when they identify training vacancies. Correspondence concerning training can be made electronically through the FOTP mailbox at Program, FOTP.

Course Overview:

FOTP is the equivalent to basic fugitive operations training. DRO officers with extensive knowledge of fugitive operations as well as other subject matter experts (United States Marshals Service, etc.) were called upon to provide subject matter expertise and course content. This course will provide the DRO officer with the necessary tools to locate and apprehend fugitive aliens. A major focus of the course is to increase the participants' investigative skills through courses designed to teach effective utilization of the Internet, Agency databases, and other sources of information to locate where a fugitive lives, visits, and/or works. Students are encouraged to bring cases from their office to use in the practical exercise portion of the computer training. This will provide a sense of real-time investigative efforts and demonstrate the effectiveness and limitations on computer database searches.

Participants will work in teams in order to increase the realism of the training and aid in the development of these skills. There will be many opportunities for participants to share lessons learned with the class and in their teams. The course also provides participants with the opportunity to learn and practice surveillance techniques, vehicle stops, and apprehension procedures.

Students will be placed into Fugitive Operations Teams (FOT)³ and given various practical assignments to accomplish. Each practical assignment will follow a course of instruction that will provide the student with the information needed to complete it. Each course and follow-on practical assignment will build on a previous block of instruction. At the end of the course, each team will have prepared themselves to locate and safely apprehend a specific target fugitive.

This training is not designed to provide 'SWAT' tactical training but it is being continually reviewed and updated to prepare the officer to be able to perform the duties of a law enforcement officer in the field. For that reason officer safety is continually stressed. Graduates of this course will not be certified to perform any dynamic tactics. However, some of the officer tactics and survival skills that the student will be taught were refined by

³ Complete FOTs from a Field Office will (to the greatest extent possible) be allowed to operate as a team.

police tactical units and are now standard courses of instruction in many basic police academies. Some of these subjects covered in the class are:

- Contact and Cover Principles
- Building Approach and Entry
- Room Search
- Vehicle Stops

These subjects, along with others, will require the student to perform and conduct operations as if he/she were in the field. Role players and instructors will present the students with challenges that cover the Use of Force Continuum. It will be up to the students to respond properly to each situation or scenario. While this is not a graded course, it will provide the student an adequate gauge of their individual skills and tactics. For permanent FOTs attending training it should also provide a gauge on their team skills and tactics.

Student Requirements

Officers nominated for this course must be supervisory deportation officers, deportation officers or immigration enforcement agents assigned to NFOP teams⁴. Students are expected to report for class ready to fully participate. Persons nominated for this training must have current handgun qualifications and be familiar with the Service shotgun. Students will fire handgun and shotgun qualification courses and will be provided with a familiarization course with the M-4 rifle as part of the curriculum. Students who demonstrate a lower level of expertise with the shotgun will be afforded limited refresher training. Students will also participate in Force-On-Force Training using Simunition handguns. Instructors, playing the part of 'bad guy' will be armed either with Simunition handguns or paintball guns. Students are expected to treat these scenarios as if they were real.

Students will be returned to their Field Offices for the following reasons:

- Refusal to perform or complete a course of instruction
- Failure to qualify with either handgun or shotgun
- Repeated firearms safety violations
- Demonstrated poor officer safety tactics following remedial training
- Medical conditions that preclude their full participation

Students may be subject to a Performance Review Board to determine their suitability to continue in training. Students who are returned may be allowed to attend the class again in the future upon request through the chain of command to the Chief, Headquarters Fugitive Operations Unit (HQFOU). Students who require remedial firearms training will require a certification from the field office Senior Firearms Instructor (SFI) that they have demonstrated the requisite proficiency in the area that originally gave them trouble.

⁴ Other officers assigned to FOD directed fugitive operational duties will be allocated slots once all NFOP team members are trained.

Consequently, students who participate in the FOTP are not automatically assured of a certificate of satisfactory completion of the program. Students who are returned to their duty station after failing to successfully complete the program may face the possibility of being removed from the NFOP team to which they have been assigned and will be returned to the standard non-fugitive operational duties outlined in their primary position description.

Required Equipment:

- Handgun (Service Issued or Personally owned and approved) and six (6) magazines
- Equipment (Pistol or River) Belt with all associated items (i.e. holster, magazine carrier, handcuff case, expandable steel baton w/carrier, radio carrier, flashlight, etc)⁵
- If used, low profile holster, magazine carrier and handcuff case.
- External tactical body armor carrier w/ ID strips (armor panels not needed)
- Rough duty pants
- Footwear normally worn when conducting an operation
- Soft clothes worn during low profile operations
- Any other equipment normally worn when conducting an operation

Suggested Equipment:

- High profile identification jacket (Raid Jacket)
- If you have two sets of body armor, bring your oldest set with internal carrier
- Pair of clear safety glasses.
- Secondary hearing protection if available, FLETC now requires two forms of hearing protection
- Binoculars
- Insect repellent, sun tan lotion and sun screen
- Baseball cap
- Personal Hydration System

⁵ Tactical ballistic nylon equipment is authorized and highly recommended for use with tactical body armor carrier.

Final Note:

If you have any medical condition that might require special clearance, ensure that you bring a letter from your doctor documenting your ability to participate in the course. While there are no real strenuous exercises, there are several exercises that require moderate exertion.

Other Training:

Basic First Aid and Cardio Pulmonary Resuscitation (CPR) Training is coordinated and completed at the Field Office level. Training records are to be maintained by the supervisor with updates being recorded in ICE's ONTRACK training database. As indicated in the Director's memorandum, dated December 3, 2003 regarding CPR training, once certified, Officers should be "re-certified yearly, or as required, thereafter."

Other training opportunities will be distributed to the field as they become available and HQFOU has determined they offer a benefit to the program. Field Offices are encouraged to forward training opportunities to HQFOU for review and approval, as appropriate. Outside training sessions conducted as workshops at conferences sponsored by the National Association of Fugitive Investigators (NAFI) are highly recommended. These conferences are extremely informative and provide an opportunity for individual officers to network with other fugitive officers from various agencies on a national basis.

Questions regarding training issues should be directed to the HQFOB via e-mail at HQDRO, FUGOPS.

cc: ICE Academy – Deportation Officer Training
Official file
NFTTU Director

APR 26 2004



U.S. Immigration
and Customs
Enforcement

MEMORANDUM FOR: All Field Office Directors
Deputy Assistant Director for Field Operations
FROM: (b)(6),(b)(7)(C)
Acting Director

SUBJECT: Addition of Chapter 19, Section 17 (Fugitive Operations Insignia) of
the Detention and Deportation Officers Field Manual (DDFM)

BACKGROUND

The use of distinctive insignia to identify members of a particular group is as old as mankind. Some of the first recorded uses of distinctive insignia can be traced to the time of the Roman Empire when flags and staffs marked various legions and their units. The development of flags for the purpose of identifying particular countries became prominent when men took to sailing ships and began to explore the world.

In modern times distinctive insignia has been used to identify not only that a person was a member of a particular military unit but also specific units of larger units. Within many law enforcement agencies various divisions and programs develop and use a distinctive insignia. These insignia serve to not only identify what a particular division or program does to members of an agency, but also to the general public. They also serve the vital function of improving morale and establishing an *esprit de corps* that serves the unit well in good times as well as bad.

Recognizing the many positive benefits that come with a unit insignia, and the high priority placed on Fugitive Operations (FUGOPS) by the Assistant Secretary U.S. Immigration and Customs Enforcement and Detention and Removal's Strategic Plan (*ENDGAME*), the Director of Detention and Removal (DRO) directed the Chief, Fugitive Operations Branch (FOB), to develop an insignia for the National Fugitive Operations Program. In the January/February 2004 issue of *The Fugitive Operations Newsletter*, a contest was announced and all members of DRO were asked to submit proposals for an insignia. From the submissions four candidates were selected and an e-mail was sent to all Field Office Directors asking them to forward to their officers the nominated selections and requesting that all officers vote on their choice. After a tally of the votes the final selection was submitted to the Director, DRO for approval. The following insignia is a culmination of that development process.

The DDFM is changed to reflect the addition of Section 17, Chapter 19. Accordingly the DDFM is changed as follows:

19.17 Fugitive Operations Insignia

POLICY

Effective immediately the insignia for the National Fugitive Operations Program is approved for use by the Fugitive Operations Branch, Immigration and Customs Academy, Detention and Removal Fugitive Operations Training Program (FOTP), Headquarters DRO designated Fugitive Operations Teams (FOT) and those officers who have successfully completed the FOTP. The insignia shall consist of the following:

"The selection of the white knight indicates the integrity and honor with which our officers serve. The chess piece symbolizes the strategy we use in targeting and locating the fugitive; it's movement across the board signifies the indirect path we take to complete our mission. The lightning bolt symbolizes the speed with which we strike; the Roman gladius, our strength and power. The motto, Ne Quis Effugiat (We exist so none will escape) stands for our dedication and resolve."

The insignia will not be placed on raid jackets but may be used in reports, training materials, signage, challenge coins and other items as directed by Headquarters, Fugitive Operations Branch (HQFOB). With respect to challenge coins those officers who have successfully completed the newest (FY2003 and up) version of the FOTP will be presented a FUGOPS Challenge Coin upon graduation. Additionally, those persons nominated by the Senior Training Operations Supervisor [TOS (Deportation)] and active duty members of the national FOTs who have been approved by the HQFOB may receive and possess the FUGOPS Challenge Coin. A representation of the Fugitive Operations insignia and the challenge coins are found at Attachment 1 and 2 respectively.

PROCEDURE

Officers who successfully complete the newest version of FOTP will be awarded a coin upon graduation. The TOS (Deportation) is charged with maintaining the roster of all graduates of FOTP. Officers on the FOTP roster who lose their coins may request a replacement through HQFOB by submitting a request via e-mail at HQDRO, FUGOPS.

FOT officers who wish to nominate officers or agents of agencies who have provided material and substantial support to the FUGOPS program at any level may request the issuance of FUGOPS Challenge Coins in the interest of operational liaison. Officers should submit an e-mail request through HQFOB stating the circumstances of the need and the number of coins required.

The insignia may be reproduced on shirts, caps, posters, flags and other items as deemed appropriate by HQFOB. The full color or challenge coin version of the insignia may be utilized interchangeably at the discretion of the Chief, HQFOB.

Addition of Chapter 19, Section 17 (Fugitive Operations Insignia) of the DDFM

Page 3

Field Offices conducting press briefings are encouraged to display the insignia along with appropriate Department of Homeland Security (DHS) branding items. When displayed with DHS emblems the FUGOPS insignia will be placed in a proper senior to subordinate relationship.

cc: ICE Academy – Deportation Officer Training



Fugitive Operations

Ne Quis Effugiat

The selection of the white knight indicates the integrity and honor with which our officers serve. The chess piece symbolizes the strategy we use in targeting and locating the fugitive; its movement across the board signifies the indirect path we take to complete our mission. The lightning bolt symbolizes the speed with which we strike; the Roman gladius, our strength and power. The motto, Ne Quis Effugiat (We exist so none will escape) stands for our dedication and resolve.





**U.S. Immigration
and Customs
Enforcement**

MAY 20 2005

MEMORANDUM FOR:

FROM:

(b)(6),(b)(7)(C)

SUBJECT:

Addition of Chapter 19, Section 18, International Police Organization (INTERPOL) of the Detention and Deportation Officer's Field Manual (DDFM)

The DDFM is updated to reflect the addition of Section 18, Chapter 19. Accordingly, the DDFM is updated as follows:

19.18 International Criminal Police Organization (INTERPOL)

I. Background

Headquarters, DRO has previously issued memoranda on the preparation of INTERPOL 'Green Notices'. Those memoranda are made a part of this Section of the DDFM. All DRO personnel regardless of assignment shall refer to this Section when performing activities related to INTERPOL.

INTERPOL maintains six color-coded notices and subject advisory notices (Appendix [REDACTED]). All notices and advisories are available to any of the over 180 member nations. However most distribution is limited to nations where the subject of the notice or advisory is likely to be encountered.

- An INTERPOL Red Notice is used to seek the arrest with a view toward extradition of subjects wanted and based upon an arrest warrant.
- An INTERPOL Blue Notice is used to collect additional information about a person's identity or illegal activities in relation to a criminal matter.
- An INTERPOL Green Notice is used to provide warnings and criminal intelligence about persons who have committed criminal offences and are likely to repeat these crimes in other countries.
- An INTERPOL Yellow Notice is used to help locate missing persons, especially minors, or to help identify persons who are not able to identify themselves.

- An INTERPOL Black Notice is used to seek the true identity of unidentified bodies.
- An INTERPOL Orange Notice is used to warn police, public bodies and other international organizations of possible threats to them from hidden weapons, parcel bombs, and other dangerous items or material.

II. POLICY

INTERPOL

DRO personnel shall complete 'Green Notice' applications (Appendix [REDACTED]) as the situation dictates. Green Notice applications will be completed on those cases where the subject being removed is a registered sex offender and/or a known gang member whose "gang" conducts operations outside of the United States.

Blue Notice applications (Appendix [REDACTED]) will be completed in cases "to collect additional information about a person's identity or illegal activities in relation to a criminal matter".

Where DRO has developed information that a *non-criminal* fugitive alien has fled to a foreign country and we are seeking to confirm that the alien has departed the United States, a Request for Foreign Verification (RFV) (Appendix [REDACTED]), will be made to HQFUGOPS, electronically or via mail. HQFUGOPS will then utilize whatever resources available (Embassies, INTERPOL, etc.) and provide the requesting office with the information obtained.

The Chief, Fugitive Operations Unit has oversight responsibility for this program and will ultimately make the determination as to what applications will be forwarded to INTERPOL.

III. PROCEDURE

INTERPOL

When a Fugitive Operations Team¹ (FOT) uncovers information that a non-criminal alien fugitive may be outside of the United States, the team will complete a RFV (Appendix [REDACTED]) to determine if the fugitive is outside of the country and/or if the fugitive has committed criminal offenses in a foreign country. Upon receipt of information in response to this request the FOT shall take appropriate case action that may include but is not limited to:

- Closure of an open case
- Further leads concerning the alien's possible location inside or out of the U.S.
- Updating of DACS with any foreign criminal arrest or conviction information or any other pertinent information germane to the case

¹ In the context of Section 2, FOTs or DRO personnel who conduct fugitive operations are to be considered one in the same.

The removing office will complete Green Notice applications (Appendix [REDACTED]) for Operation Predator (OPPED) aliens, more particularly those registered as sex offenders, as part of the preparation for the removal. It is important that fields such as the Summary of Facts of the Case be thoroughly, but briefly, answered. This field should put a summary of the facts of the case and not just the statute violated. Furthermore, the field should record where the subject is a registered sex offender and any offender number assigned. The application should be completed and forwarded as soon as possible (such as aliens for whom a Third Agency Check must be requested) but in no case later than the same day as the Request for Escorted Country Clearance (RECC) is made, if appropriate. If a RECC is not made, the Green Notice application will be completed and forwarded to HQ FUGOPS as soon as practical after removal.

Blue and Green Notice applications shall be forwarded either electronically to the HQFUGOPS mailbox or hard copy via FedEx to:

DHS/ICE/DRO
801 I Street, NW, Suite 930
Washington, DC 20536

ATTN: HQ FUGOPS/INTERPOL

Any questions regarding operational requirements should be directed to the INTERPOL Liaison Officer, Headquarters, Fugitive Operations Unit through either the HQFUGOPS mailbox or at (202) 353-(b)(6).

Any questions regarding this policy should be directed to (b)(6),(b)(7)(C) Chief, Headquarters Fugitive Operations Unit at (202)353-(b)(6)



U.S. Department of Homeland Security
Bureau of Immigration and Customs Enforcement

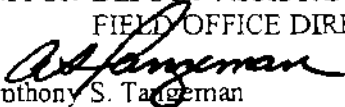
HQDRO 50/12.8

Office of the Director

801 I Street NW
Washington, DC 20536

October 8, 2003

MEMORANDUM FOR DEPUTY ASSISTANT DIRECTORS
FIELD OFFICE DIRECTORS

FROM: 
Anthony S. Targem
Director
Office of Detention and Removal

SUBJECT: Addition of Chapter 19, Section 33 (Third Agency Checks for all Specially Designated Countries) to the Detention and Deportation Officer's Field Manual (DDFM)

The DDFM is changed to reflect the addition of Section 33, Chapter 19. Accordingly, the DDFM is changed as follows:

19.33 Third Agency Checks for all Specially Designated Countries

I. Discussion

The events of September 11, 2001 have led the United States Government to identify certain countries that have shown a tendency to promote, produce or protect terrorist organizations and/or their members. That list of designated countries is contained in Appendix 19-16 entitled *Specially Designated Countries* (SDC). It is imperative that all officers consult the list to determine if an alien's country of citizenship or nationality is listed.

II. Policy

Effectively immediately, any alien from a SDC who is apprehended or detained by the Bureau of Immigration and Customs Enforcement (ICE), Detention and Removal Operations (DRO) must be cleared by the Custody Review Unit (CRU) prior to release. The detaining office will send a message to the CRU of the Headquarters, Fugitive Operations Branch (HQFOB) via cc: Mail to: **Command, CRU-DRO**. Prior to transfer to another agency, release to the streets or removal from the United States, the alien must

be cleared for such transfer or release by the CRU. The CRU shall determine if the alien is a *National Security or Third Agency Interest* (TAI) person.

III. Procedure

CRU Initial and Subsequent Notification

The subject line of all cc: Mail messages shall read: "*Third Agency Check* XXX XXX XXX". The initial report shall include the alien's name, alien registration number (A-file number), date of birth (DOB), place of birth (POB), criminal convictions or pending criminal charges, removal charge(s), and a brief description of the circumstances of the alien's apprehension. It will take approximately three weeks for all third agency checks to be completed. Subsequent messages from the detaining office shall contain the same subject line but will include a sequence number after the alien registration number (XXX XXX XXX-XX).

Custody Issues

The fact that the alien is a SDC subject and pending clearance by the CRU must be immediately communicated to the local Office of Legal Advisor (OLA). CRU shall notify Headquarters, OLA so they can be prepared to provide advice or direction to the local OLA. The alien's SDC status must be taken into consideration should the alien file a motion for a custody redetermination hearing before the Executive Office for Immigration Review. The fact that the alien is a SDC subject does not automatically mean that OLA will appeal an adverse custody redetermination.

Once CRU clearance is obtained, local OLA must be notified. They will then notify the Immigration Judge (IJ). However, if the IJ makes an adverse custody determination that is not appealed by OLA, the alien must be released. The CRU shall be advised of that fact immediately by telephone (202-353-(b)(6)), and followed up by a cc: Mail message with a summary of the IJ's decision. The Deportable Alien Control System (DACS) will also be updated immediately particularly the *BOND* and *CCOM* screens.

If the alien is not cleared and designated a TAI subject, local OLA shall be notified immediately. Again OLA will communicate that information to the IJ as soon as possible.

Administrative Final Orders

SDC subjects who have a final administrative removal order are subject to Post Order Custody Review (POCR) Procedures. If the SDC subject has not been designated a TAI case then, not later than 30-days prior to the SDC reaching the 90-day post-order mark, the detaining office shall forward all biographic information listed above to the CRU via cc: Mail. If a SDC subject has already been designated as a TAI subject, the detaining office shall (via cc: Mail) notify the CRU that the subject is approaching the 90-

day post-order mark. In no case shall a Field Office Director release a SDC/TAI final order subject without clearance from the CRU.

Preparation for the Removal of TAI Cases

It currently takes approximately three weeks for CRU to issue a clearance for execution of removal orders. Detaining offices are advised that CRU clearance messages should be sent a minimum of four weeks in advance of a projected removal date. This will help allow for possible delays in obtaining travel documents or making adjustments to the travel itinerary. Individual clearance must be obtained for each SDC/TAI subject who is part of Special Removal/Charter Flight Missions. A copy of the release authorization shall be attached to the Warrant of Removal/Deportation (I-205) as part of the *Travel Document Packet*.

Questions regarding this chapter shall be directed to the Chief, Fugitive Operations Branch or via cc: Mail to the CRU address.

Cc: Director, Office of Investigations
Director, Office of Intelligence

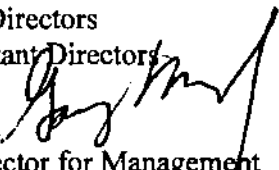
U.S. Department of Homeland Security
425 I Street, NW
Washington, DC 20536



**U.S. Immigration
and Customs
Enforcement**

JUL 11 2007

MEMORANDUM FOR: Field Office Directors
Deputy Assistant Directors

FROM: Gary E. Mead 
Assistant Director for Management

SUBJECT: Office of Detention & Removal Operations Policy and Procedure
Manual Amendment (DROPPM): Chapter 33.8: Registration
with National Law Enforcement Communications Center
(NLECC)

The addition of DROPPM Chapter 33.8 Registration with National Law Enforcement Communications Center (NLECC) establishes the requirement for DRO Law Enforcement personnel to register and remain current with the NLECC and establishes a NLECC Coordinator at each field office.

Attachment

Chapter 33: Communications

33.8 National Law Enforcement Communications Center (NLECC)

(a) **General.** The NLECC is a state of the art communications center that provides mission critical services to the Office of Detention & Removal Operations and over 30 other Federal Law Enforcement Agencies. The main objective of the NLECC is to contribute to the success of the federal law enforcement mission by providing users a modern and dynamic communications system and the support services needed to perform their respective functions efficiently and effectively. In support of this objective, the NLECC is available via radio and telephone and operates a comprehensive and advanced radio telecommunication network operable throughout the United States. This network is connected by a series of fixed radio repeaters, strategically located and linked directly to NLECC communication consoles. These consoles are staffed for 24-hour operation and provide a variety of essential services and emergency assistance.

(b) **Key NLECC Services.** Key services provided to DRO by NLECC are:

- ***Emergency Assistance.*** Sector calls in appropriate law enforcement officers or agencies as back-up to protect a user's personal safety or to assist with an enforcement mission and will call in safety checks to officers engaged in enforcement operations. Sector will respond when a user reports being stranded by an inoperative vehicle. NLECC can act as an intermediary point of contact for officers stranded on foreign escorts;
- ***Operational Support.*** Sector provides status checks for users while engaged in fugitive and CAP operations and motor vehicle stops;
- ***Real-Time Query Services.*** Sector provides information from a wide variety of official federal, state and local and international law enforcement computer networks in real-time upon request by a user;
- ***TECS Entries.*** While normally the responsibility of individual officers, in critical, time-sensitive situations, NLECC can enter information such as lookouts of subject records into the Treasury Enforcement Communications System (TECS);
- ***Phone Service - Patches/Pages/Relays.*** Through its extensive user and agency database, NLECC provides phone-to-phone patches, pages and information relays as necessary;
- ***Other Phone Services.*** Sector accepts collect calls, place caller-id blocked calls, place overseas phone calls and provide other miscellaneous phone services for users;
- ***Network and Phone Monitoring.*** On a 24 x 7 basis, NLECC monitors its incoming telephone lines and all fixed repeater network sites on a nationwide basis;

- **OTAR Services.** Sector will provide Over-The-Air Encryption Re-key (OTAR) services for users;
 - **Radio and Phone Recording.** All repeater and phone traffic is recorded and kept on file for 7 days;
 - **Master Station Log (MSL).** The MSL is a written record of all activity performed by NLECC, including the time, date, requester, action taken and disposition. This information is kept indefinitely;
 - **Personnel Database.** NLECC maintains a database on all users, including identifying and contact information. This information is made available to other authorized users on a need-to-know basis;
 - **Offices Database.** NLECC maintains a database of thousands of other Federal, state and local agency offices, along with other related phone numbers typically used by a law-enforcement communications center;
 - **Duty Roster Contact.** NLECC maintains a national duty roster database for many user agencies;
 - **National Workup Program.** As the workload permits, NLECC will, upon request take suspect violator information from field users, query the information through a battery of law-enforcement databases, then forward responsive information back to the requester.
- d. **NLECC Coordinator.** Field Office Directors, Headquarters, and the DRO Academy are required to designate an employee as a NLECC coordinator as a collateral duty assignment. The NLECC Coordinator may be drawn from either the enforcement or support staff
1. The NLECC Coordinator receives initial NLECC registration information from DRO employees on the DRO NLECC Registration Form or electronic facsimile. The NLECC Coordinator sends the registration form to NLECC for individual employees or, for groups of employees, enters the registration data onto the NLECC Registration Spreadsheet and submits it electronically to NLECC. NLECC Coordinators must contact NLECC at 1-800-X-SECTOR (1-800-973-2867) for the fax number to the NLECC desk that handles their area of responsibility.
 2. NLECC Coordinator maintains an updated master roster of employees and their call signs for their field offices area of responsibility and disenrolls users as required upon transfer or cessation of employment.
 3. Each NLECC Coordinator must conduct periodic random data quality inquiries with NLECC to ensure that the most updated information for registered users is on file.
 4. NLECC will assign each NLECC coordinator a pool of call signs, which will in turn

be assigned by the NLECC Coordinators to each registered NLECC user within their area of responsibility.

c. NLECC Users. All DRO Law Enforcement Officers are required to register their contact information with NLECC by use of the NLECC Registration Form. Once registered, the Field Office or Duty Station POC will issue a NLECC call sign from the pre-assigned pool.

1. Users are required to completely fill out the attached DRO NLECC Registration form and deliver it to NLECC via facsimile. Contact the NLECC at 1-800-X-Sector (1-800-973-2867) for the fax number to the NLECC desk that handles your area of responsibility.

2. Users are required to provide timely notification to NLECC via telephone whenever their previously provided contact information changes.

3. Users may contact NLECC to advise on periods of detail assignment, leave, etc and provide alternate contact information or alternate contact persons.

e. Training. The Career Development and Training Unit in coordination with NLECC is responsible for training on NLECC related services and equipment both at the DRO Academy and in the field. Training requests are to be routed through channels to the Career Development and Training Unit.

OFFICE OF DETENTION AND REMOVAL OPERATIONS
REGISTRATION DATA
NATIONAL LAW ENFORCEMENT COMMUNICATIONS CENTER

☐ New Entry ☐ Update Entry ☐ Delete Entry

Current Callsign (if assigned):

Name (Last, First, MI):

Title:

SSN:

Office of Assignment:

Wk Telephone (direct or include extension):

Wk Cell Phone:

Personal Cell:

Home Phone:

Pager:

Office Address:

Home Address:

Name/Title/Telephone of Supervisor:

This form must be faxed to the NLECC. Please dial 1-800-X-SECTOR (1-800-973-2867) and ask for the fax number for the NLECC desk servicing your area of responsibility.

Original form to be retained by the DRO Field Office NLECC Coordinator.



U.S. Department of Homeland Security
Bureau of Immigration and Customs Enforcement

HQDRO 50/12.8

Office of the Director

801 I Street NW
Washington, DC 20536

MEMORANDUM FOR ALL FIELD OFFICE DIRECTORS
DEPUTY ASSISTANT DIRECTOR FOR FIELD OPERATIONS

FROM: *[Signature]*
Anthony J. Tangeman
Director
Office of Detention and Removal

SUBJECT: Addition of Chapter 19, Section 9 [Bureau of Immigration and Customs Enforcement (ICE) Most Wanted Program] of the Detention and Deportation Officer's Field Manual (DDFM)

The DDFM is changed to reflect the addition of Section 9, Chapter 19 [Bureau of Immigration and Customs Enforcement (ICE) Most Wanted Program]. Accordingly, the DDFM is changed as follows:

19.9 Bureau of Immigration and Customs Enforcement (ICE) Most Wanted Program

L. POLICY

All Field Offices shall create Wanted Posters for aliens designated as fugitives. [REDACTED] contains information on how to complete a Wanted Poster. Only the Wanted Poster ([REDACTED]) authorized by Headquarters, Fugitive Operations Branch (HQFOB) and Regulations and Forms Services Division is authorized for use. No changes or deviations are to be made to this form. Earlier formats and locally customized formats are no longer authorized. The only 'Most Wanted' Poster authorized is the ICE Most Wanted Program administered by HQFOB. Field Offices desiring to nominate a target for inclusion to the 'Most Wanted' program should forward a copy of the target's folder to HQFOB.

~~FOR OFFICIAL USE ONLY~~
~~LAW ENFORCEMENT SENSITIVE~~

II. GENERAL PROCEDURES

The purpose of creating and distributing "wanted posters"¹ relating to targeted fugitive aliens is to ensure the greatest likelihood of locating and apprehending these aliens. The use of wanted posters is a *proactive* approach in conducting fugitive operations as opposed to placing cases into the NCIC system, which is *reactive* in nature. However, both should be used when conducting fugitive operations. It is recommended that wanted posters only be used in cases that are actually being worked, as they can be distributed to the appropriate agencies as the case continues to progress and additional leads and information are developed. When starting to work the case, verification should be made that it has been entered into NCIC. This is important so that any contact between the absconder and another Law Enforcement Agency (LEA) can lead to apprehension for or by ICE.

Distribution

Copies of wanted posters should be distributed to various federal, state and local law enforcement agencies, as well as, other agencies such as the department of motor vehicles, parole and probation offices, bank security divisions and any other agency which may be of assistance. Examples of other agencies and/or entities are correctional facilities, District Attorney's offices, state insurance fraud bureaus, and state bureaus of special investigations, airline security divisions and Confidential Informants².

Distribution List

The following is a list of agencies with a brief description of how the particular agency may be of assistance with this program in a FOT's jurisdiction. It is important that, practical, personal liaison be established with "key" personnel assigned to each agency where wanted posters are distributed in your jurisdiction, along with a brief explanation of the ICE's mission. One of the most important points to stress is that these fugitives have already completed the hearing process and have outstanding Warrants of Deportation/Removal, which means their removal can be expeditiously accomplished subsequent to apprehension. This will increase the likelihood of other agencies proactive participation and assistance in attempts to locate wanted fugitives. It should also be explained that these cases have been entered into NCIC, if applicable. Distribution of wanted posters should be limited to fugitive cases in your operational area.

When a fugitive is apprehended, it is important to contact the personnel that you previously made contact with in order to make them aware of the apprehension. This

¹ "Wanted Posters" have been around as long as there have been criminals. Indeed early U.S. Marshals used wanted posters to spread information about fugitives. As time went by sketches and eventually photographs were attached. The modern success stories in poster programs are the FBI's Top Ten and the Marshals Service Top 15 Program.

² If the decision is made to provide a copy of a "wanted Poster" to a Confidential Informant, they should be warned to keep them in a secure location.

~~FOR OFFICIAL USE ONLY~~
~~LAW ENFORCEMENT SENSITIVE~~

can be easily accomplished by listing these agency personnel as "leads" on form G-176 during the course of your fugitive investigation. This will save these agencies unnecessary time and effort attempting to locate the fugitive for ICE and will enhance the rapport between agencies.

Oftentimes, when conducting liaison with personnel from other law enforcement agencies, the question is asked by what authority they can apprehend ICE fugitives. It is recommended that ICE personnel instruct them to consult with their own legal department regarding this matter. Advise them that ICE is only seeking information that they may be able to provide as to the whereabouts of wanted ICE fugitives.

FEDERAL AGENCIES

U.S. DEPARTMENT OF HOMELAND SECURITY

Wanted posters should be distributed to the various agencies or bureaus that make up the Department of Homeland Security. A partial list of these agencies and bureaus includes:

- Bureau of Immigration and Customs Enforcement, Office of Investigations
- Transportation Security Administration
- Federal Air Marshals
- Office of Air and Marine Interdiction (ICE)
- Federal Protective Service³
- Bureau of Customs and Border Protection (Inspections)
- U.S. Border Patrol
- United States Secret Service
- Bureau of Citizenship and Immigration Services

U.S. Passport Office/Bureau of Diplomatic Security⁴

Wanted posters may be distributed to the local office in the event the alien attempts to obtain a U.S. passport. This has proven to be extremely helpful when dealing with fugitives using fraudulent Puerto Rican birth certificates as proof of citizenship.

Drug Enforcement Administration (DEA)

³ HQ Fugitive Operations Branch (FOB) is currently working with FPS. The "Most Wanted" poster is distributed in their daily newsletter

⁴ Should problems arise, contact HQFOB.

~~FOR OFFICIAL USE ONLY~~
~~LAW ENFORCEMENT SENSITIVE~~

Because most of the wanted posters contain information relating to convicted drug traffickers, it is possible that DEA may have information on their whereabouts. DEA may also have ongoing investigations relating to these individuals, which may prove to be of interest in the area of officer safety. Additionally, these individuals may be acting as Confidential Informants for DEA. *Although ICE is sometimes aware of this information, this is not always the case.*

Internal Revenue Service (IRS)

The amount of information that the IRS can provide is very limited due to disclosure constraints. Virtually no information can be provided without a court order. However, IRS receives many anonymous calls from people who lodge complaints about aliens not paying taxes, which may prove to be beneficial.

Alcohol, Tobacco & Firearms (ATF)

Because many of the aliens wanted by ICE have been arrested and/or convicted of a firearm offense, it is possible that the local ATF office may have information on them. If you are attempting to locate an individual who is known or believed to carry firearms, ATF may provide an agent to assist with the apprehension, depending on the rapport that you have established with the local office. Additionally, if an ATF agent is working with you when an apprehension is made of an alien who has a firearm at the time of the arrest, ATF may want to take custody of the alien and prosecute him/her criminally. In those instances, you will need to lodge an ICE detainer (ICE 2880) with the arresting agent or the U.S. Marshals Service.

U.S. Marshals Service

Many of the local U.S. Marshals offices have established Fugitive Units. If you receive information that a wanted ICE fugitive was on federal parole or probation and has violated that status, the U.S. Marshals may also be attempting to locate that individual. They may have useful information for ICE or ICE may have information useful to their case/operation.

Federal Bureau of Investigation (FBI)

Wanted posters may be distributed to local FBI Foreign Counter Intelligence and Drug Units⁵. The FCI Unit may be interested in aliens from hostile countries and may have information regarding them. The Drug Unit may have information on aliens involved in drug trafficking. Also, many FBI agents are assigned to various local, state and county task forces, and information/wanted posters should be provided to them. It is also important to contact the FBI regarding these cases as the FBI has a large network of Confidential Informants, some of which may be the targets of your investigation.

⁵ ICE Most Wanted Information will be sent from HQFOB. The Custody Review Unit (CRU), which is part of HQFOB, can assist by coordinating with ICE's National Security Unit (NSU).

~~FOR OFFICIAL USE ONLY~~
~~LAW ENFORCEMENT SENSITIVE~~

Contact should be made with the controlling FBI agent and local ICE management should also be apprised of the situation.

Department of Labor (DOL)

The DOL may be a useful point of contact as the fugitive may be receiving some form of workman's compensation, possibly as the result of an industrial accident. Also, the fugitive may be in the process of applying for certain benefits from the DOL.⁶

Social Security Administration (SSA)

The Social Security Administration can be an outstanding source of information in providing employer information relating to wanted fugitives. *Section 290 of the Immigration and Nationality Act requires that the SSA provide employer information to ICE when requested.*⁷

STATE/OTHER AGENCIES/ENTITIES

Bureau of Special Investigations (BSI)

Many states may have agencies such as these. In some states, the BSI provides information relating to individuals who are collecting state benefits such as welfare, unemployment, food stamps, etc. The BSI may provide personnel to assist by sending a "call-in" letter to the wanted fugitive in order to assist ICE in effecting their arrest. *It is important to remember that most drug dealers do not work and many are collecting state benefits!*

Financial/Insurance Fraud Associations

Some states have agencies that combat financial and insurance fraud. Many times these may be private agencies funded by state government. It is extremely important to initiate liaison with local personnel from these agencies, as they tend to have extensive financial and insurance related databases. You should remember that, quite often, their investigations involve aliens, and they may be in need of your assistance as much as ICE needs them.

State Police

Wanted posters should be provided to State Police Departments. They should be provided to both the uniformed and non-uniformed troopers (detectives). You should also find out if State Police officers are assigned to local drug task forces and provide

⁶ HQFOB is working with DOL to coordinate the exchange of information. HQFOB will send any information it receives to the field as 'Hot Leads'.

⁷ HQFOB is working with SSA to coordinate the exchange of information. HQFOB will send any information it receives to the field as 'Hot Leads'.

~~FOR OFFICIAL USE ONLY~~
~~LAW ENFORCEMENT SENSITIVE~~

them with information/wanted posters on ICE fugitives. When you provide copies of the wanted posters to the State Police, you should also include any known vehicles that the fugitives are known to use. This will assist the State Police in determining the identity of an individual or individuals in the vehicle.

Correctional Institutions

Wanted posters should be placed in all correctional facilities, including ICE Service Processing Centers, within your respective area of responsibility. The most effective area for placement would be the inmate processing area. It is particularly important that all aliases be noted on the wanted poster.

Department of Motor Vehicles (DMV)

In addition to information that DMVs can provide concerning aliens, they also can be another force multiplier in looking for a fugitive. Should the target not have a driver's license for his current residence⁶, providing a wanted poster to driver's license examiners or their investigative units could result in an easy apprehension.

Local Police Departments

Local police departments are probably the most useful of all agencies. You should always communicate with the detective units, however you may also want to communicate with the uniformed officers as well. When communicating with police departments, you must ensure that personnel on all shifts are aware of the information. The local police are more likely to come into contact with fugitives than any other agency and they have proven to be a necessary source of information. You should also find out if the department has its own drug unit and housing unit. Many fugitives are found residing in public subsidized housing and the housing police units can get information discreetly through local contacts. In large metropolitan areas, there may be transit police departments. Wanted posters should be given to these departments, especially if the fugitive does not possess a valid driver's license.

Probation Offices

When dealing with probation officers, you must remember that, unfortunately, some officers are sympathetic to their clients and may not provide you with as much information as you may like. In extreme circumstances, they may even contact the alien and inform them of ICE's interest. Experienced ICE officers will usually know the names and telephone numbers of reliable probation officers in the various district courts within their jurisdiction. Posters should only be placed with probation officers that you are sure will not alert the target to our interest.

⁶ Some power companies and agencies that provide financial assistance require proof of a local address.

~~FOR OFFICIAL USE ONLY~~
~~LAW ENFORCEMENT SENSITIVE~~

Local banks

Most banks have a Director of Security. Liaison should be initiated with these officials, as they are often helpful in providing account information. Security officers frequently meet at regularly scheduled intelligence conferences to discuss problems and concerns. Usually, ICE officers are welcome to attend these meetings and information/wanted posters can be circulated among the attendees.

Airline Security Divisions

Liaison should be established with airline security officials of airlines that have direct flights to countries that fugitives are likely to travel to. Wanted posters may be given to these officials, but these officials should be briefed of the restrictions and prohibitions contained in Section 215 of the Immigration and Nationality Act regarding the departure from the United States of certain classes of aliens.

Confidential Informants

The use of wanted posters with Confidential Informants can reap enormous results, however, a certain amount of caution must be used when doing so. Prior to allowing Confidential Informants to view Service wanted posters, you must be extremely confident in their ability and reliability. These may be Confidential Informants from ICE or other agencies. In any event, you should be thoroughly familiar with all ICE policies and regulations regarding their use. Once again, Confidential Informants should not be given a copy of the poster or if given one, warned to keep them in a secure location. See [REDACTED] - Confidential Informants.

CLOSING ACTIONS FOR FUGITIVES APPREHENDED USING WANTED POSTERS

Fugitive cases apprehended using a wanted poster should be immediately reported to all agencies/personnel on the wanted poster distribution list. This will foster good liaison and not waste the time of other agencies in looking for fugitives that have already been apprehended and removed. Also make sure that the case is removed from NCIC or transferred into the Deported Felon File (DFF), if applicable. (b)(7)(E) and DACS should be properly updated as well.

~~FOR OFFICIAL USE ONLY~~
~~LAW ENFORCEMENT SENSITIVE~~

JUN 3 0 2010



U.S. Immigration
and Customs
Enforcement

MEMORANDUM FOR: All ICE Employees

FROM: John Morton
Assistant Secretary 

SUBJECT: Civil Immigration Enforcement: Priorities for the Apprehension, Detention, and Removal of Aliens

Purpose

This memorandum outlines the civil immigration enforcement priorities of U.S. Immigration and Customs Enforcement (ICE) as they relate to the apprehension, detention, and removal of aliens. These priorities shall apply across all ICE programs and shall inform enforcement activity, detention decisions, budget requests and execution, and strategic planning.

A. Priorities for the apprehension, detention, and removal of aliens

In addition to our important criminal investigative responsibilities, ICE is charged with enforcing the nation's civil immigration laws. This is a critical mission and one with direct significance for our national security, public safety, and the integrity of our border and immigration controls. ICE, however, only has resources to remove approximately 400,000 aliens per year, less than 4 percent of the estimated illegal alien population in the United States. In light of the large number of administrative violations the agency is charged with addressing and the limited enforcement resources the agency has available, ICE must prioritize the use of its enforcement personnel, detention space, and removal resources to ensure that the removals the agency does conduct promote the agency's highest enforcement priorities, namely national security, public safety, and border security.

To that end, the following shall constitute ICE's civil enforcement priorities, with the first being the highest priority and the second and third constituting equal, but lower, priorities.

Priority 1. Aliens who pose a danger to national security or a risk to public safety

The removal of aliens who pose a danger to national security or a risk to public safety shall be ICE's highest immigration enforcement priority. These aliens include, but are not limited to:

Civil Immigration Enforcement: Priorities for the Apprehension, Detention, and Removal of Aliens
Page 2

- aliens engaged in or suspected of terrorism or espionage, or who otherwise pose a danger to national security;
- aliens convicted of crimes, with a particular emphasis on violent criminals, felons, and repeat offenders;
- aliens not younger than 16 years of age who participated in organized criminal gangs;
- aliens subject to outstanding criminal warrants; and
- aliens who otherwise pose a serious risk to public safety.¹

For purposes of prioritizing the removal of aliens convicted of crimes, ICE personnel should refer to the following new offense levels defined by the Secure Communities Program, with Level 1 and Level 2 offenders receiving principal attention. These new Secure Communities levels are given in rank order and shall replace the existing Secure Communities levels of offenses.²

- Level 1 offenders: aliens convicted of “aggravated felonies,” as defined in § 101(a)(43) of the Immigration and Nationality Act,³ or two or more crimes each punishable by more than one year, commonly referred to as “felonies”;
- Level 2 offenders: aliens convicted of any felony or three or more crimes each punishable by less than one year, commonly referred to as “misdemeanors”; and
- Level 3 offenders: aliens convicted of crimes punishable by less than one year.⁴

Priority 2. Recent illegal entrants

In order to maintain control at the border and at ports of entry, and to avoid a return to the prior practice commonly and historically referred to as “catch and release,” the removal of aliens who have recently violated immigration controls at the border, at ports of entry, or through the knowing abuse of the visa and visa waiver programs shall be a priority.

Priority 3. Aliens who are fugitives or otherwise obstruct immigration controls

In order to ensure the integrity of the removal and immigration adjudication processes, the removal of aliens who are subject to a final order of removal and abscond, fail to depart, or intentionally obstruct immigration controls, shall be a priority. These aliens include:

¹ This provision is not intended to be read broadly, and officers, agents, and attorneys should rely on this provision only when serious and articulable public safety issues exist.

² The new levels should be used immediately for purposes of enforcement operations. DRO will work with Secure Communities and the Office of the Chief Information Officer to revise the related computer coding by October 1, 2010.

³ As the definition of “aggravated felony” includes serious, violent offenses and less serious, non-violent offenses, agents, officers, and attorneys should focus particular attention on the most serious of the aggravated felonies when prioritizing among level one offenses.

⁴ Some misdemeanors are relatively minor and do not warrant the same degree of focus as others. ICE agents and officers should exercise particular discretion when dealing with minor traffic offenses such as driving without a license.

- fugitive aliens, in descending priority as follows:⁵
 - fugitive aliens who pose a danger to national security;
 - fugitives aliens convicted of violent crimes or who otherwise pose a threat to the community;
 - fugitive aliens with criminal convictions other than a violent crime;
 - fugitive aliens who have not been convicted of a crime;
- aliens who reenter the country illegally after removal, in descending priority as follows:
 - previously removed aliens who pose a danger to national security;
 - previously removed aliens convicted of violent crimes or who otherwise pose a threat to the community;
 - previously removed aliens with criminal convictions other than a violent crime;
 - previously removed aliens who have not been convicted of a crime; and
- aliens who obtain admission or status by visa, identification, or immigration benefit fraud.⁶

The guidance to the National Fugitive Operations Program: Priorities, Goals and Expectations, issued on December 8, 2009, remains in effect and shall continue to apply for all purposes, including how Fugitive Operation Teams allocate resources among fugitive aliens, previously removed aliens, and criminal aliens.

B. Apprehension, detention, and removal of other aliens unlawfully in the United States

Nothing in this memorandum should be construed to prohibit or discourage the apprehension, detention, or removal of other aliens unlawfully in the United States. ICE special agents, officers, and attorneys may pursue the removal of any alien unlawfully in the United States, although attention to these aliens should not displace or disrupt the resources needed to remove aliens who are a higher priority. Resources should be committed primarily to advancing the priorities set forth above in order to best protect national security and public safety and to secure the border.

C. Detention

As a general rule, ICE detention resources should be used to support the enforcement priorities noted above or for aliens subject to mandatory detention by law. Absent extraordinary circumstances or the requirements of mandatory detention, field office directors should not expend detention resources on aliens who are known to be suffering from serious physical or mental illness, or who are disabled, elderly, pregnant, or nursing, or demonstrate that they are

⁵ Some fugitives may fall into both this priority and priority 1.

⁶ ICE officers and special agents should proceed cautiously when encountering aliens who may have engaged in fraud in an attempt to enter but present themselves without delay to the authorities and indicate a fear of persecution or torture. See Convention relating to the Status of Refugees, art. 31, *opened for signature* July 28, 1951, 19 U.S.T. 6259, 189 U.N.T.S. 137. In such instances, officers and agents should contact their local Office of the Chief Counsel.

primary caretakers of children or an infirm person, or whose detention is otherwise not in the public interest. To detain aliens in those categories who are not subject to mandatory detention, ICE officers or special agents must obtain approval from the field office director. If an alien falls within the above categories and is subject to mandatory detention, field office directors are encouraged to contact their local Office of Chief Counsel for guidance.

D. Prosecutorial discretion

The rapidly increasing number of criminal aliens who may come to ICE's attention heightens the need for ICE employees to exercise sound judgment and discretion consistent with these priorities when conducting enforcement operations, making detention decisions, making decisions about release on supervision pursuant to the Alternatives to Detention Program, and litigating cases. Particular care should be given when dealing with lawful permanent residents, juveniles, and the immediate family members of U.S. citizens. Additional guidance on prosecutorial discretion is forthcoming. In the meantime, ICE officers and attorneys should continue to be guided by the November 17, 2000 prosecutorial discretion memorandum from then-INS Commissioner Doris Meissner; the October 24, 2005 Memorandum from Principal Legal Advisor William Howard; and the November 7, 2007 Memorandum from then-Assistant Secretary Julie Myers.

E. Implementation

ICE personnel shall follow the priorities set forth in this memorandum immediately. Further, ICE programs shall develop appropriate measures and methods for recording and evaluating their effectiveness in implementing the priorities. As this may require updates to data tracking systems and methods, ICE will ensure that reporting capabilities for these priorities allow for such reporting as soon as practicable, but not later than October 1, 2010.



U.S. Immigration and Customs Enforcement

MEMORANDUM FOR: All Employees
Detention & Removal Operations

FROM: Victor A. Cerda *For*
Acting Director

SUBJECT: Clarification of Significant Incident Reporting (SIR), Reporting
Significant Prospective Enforcement Activity (SPEAR) and
Implementation of the Intranet Web-Based Significant Event
Notification (SEN) application

NOV - 9 2004

CLARIFICATION OF SIGNIFICANT INCIDENT REPORTING (SIR)

In accordance with the Assistant Secretary directive as set forth in the memorandum dated March 11, 2003, "Reporting Requirements for Significant Events" the process for reporting significant incidents to the appropriate official must be adhered to in a timely and consistent manner. This directive remains in effect.

In light of recent incidents and the reorganization of the Headquarters (HQ) Office of Detention and Removal Operations (DRO), I have re-evaluated the use of, and information obtained from, the Bureau of Immigration and Customs Enforcement (ICE), ICE Operations Center (IOC). The simple policy regarding reporting an incident is, when in doubt, report it. Significant Incident Reports submitted to the IOC should contain as much detail as possible. It is understood that many of these incidents will require further investigation, but preliminary facts are required to ensure proper notification to ICE Leadership. Field Office Directors (FODs) are responsible for ensuring that SIRs requiring follow-up action are completed in a timely fashion.

In the following incidents, the FOD or Deputy FOD (DFOD) must telephonically notify the HQ/DRO Assistant Director for Operations within two hours of the event or as soon as possible and practical.

- Escape from DRO custody
- Discharge of a firearm
- Assault of an ICE employee involving significant injury
- A vehicular accident resulting in significant injury or death

Subject: Clarification of Significant Incident Reporting (SIR), Reporting Significant Prospective Enforcement Activity (SPEAR) and Implementation of the Intranet Web-Based Significant Event Notification (SEN) Application

Page 2

- Arrest of a DRO employee
- Arrest of a contract staff in connection to official duties
- Mass hunger strike
- Detainee death or significant injury (including suicide)
- Evacuation of an office building, facility or dorm
- Riot, significant incident, or demonstration at a detention facility
- Incident likely to generate significant national or regional media interest.

Sending an e-mail, leaving a message on voice-mail or notifying a staffer does not satisfy this telephonic reporting requirement. The FOD or DFOD remains responsible for ensuring direct notification to the Assistant Director for Operations. In cases where the Assistant Director for Operations cannot be directly reached after several attempts, FODs and/or DFODs should contact the DRO Chief-of-Staff or if necessary the Director of DRO. HQ/DRO will send notification to FODs regarding any changes to the notification points of contact for these incidents. Again, it is important to emphasize the need for prompt notification of these incidents.

CLARIFICATION OF REPORTING SIGNIFICANT PROSPECTIVE ENFORCEMENT ACTIVITY (SPEAR)

SPEARs should normally be used to report anticipated enforcement actions. FODs have discretion and will determine what is "significant" enough for a SPEAR. Activity where a press release or press coverage (by ICE, U. S. Attorney, or any other agency) is anticipated would almost certainly warrant a SPEAR. SPEARs should reach Headquarters no later than noon on the day before the activity is expected to take place, and no earlier than 48 hours before the anticipated activity.

The SPEAR should not be the first time the appropriate HQ Deputy Assistant Director (DAD) and Division learns of a major enforcement action – especially one involving major press coverage – which has been anticipated for weeks. For those major cases, the SPEAR is the final written notification that the activity is in fact still scheduled to occur at a time in the next 24 to 48 hours. The FOD or whoever is acting for the FOD must be advised of any SPEAR before it is sent to HQ.

IMPLEMENTATION OF THE INTRANET WEB-BASED SIGNIFICANT EVENT NOTIFICATION (SEN) APPLICATION

For the past several months the Office of Detention and Removal Operations has been working with the Office of Intelligence and Office of Investigations on an intranet-based methodology for submitting Significant Incident Reports (SIRS) and Significant Prospective Enforcement Reports (SPEARs). However, before beginning to consider this new initiative, it is important to remember that, other than preparation and transmission methodology, the requirements for and the importance of timely submission of SIRS and SPEARs have NOT changed. Department of Homeland Security (DHS), ICE Headquarters Management and DRO Headquarters Management must receive timely reporting of Significant Events (both those that have taken place and those that are anticipated). The new methodology described below should facilitate such reporting. However, field managers are

Subject: Clarification of Significant Incident Reporting (SIR), Reporting Significant Prospective Enforcement Activity (SPEAR) and Implementation of the Intranet Web-Based Significant Event Notification (SEN) Application

Page 3

requested to take extra care - especially as we transition to new methodology - to ensure that all necessary reporting is successfully completed.

The Office of Intelligence and other ICE components have joined in what has become an effort to develop a uniform Significant Event Notification reporting system for all of ICE. We are now introducing a state-of-the-art Intranet-based application called Significant Event Notification (SEN), which will be used by all DRO offices. This system will provide a standardized web-based format for reporting SIRS and SPEARS to the ICE Operations Center.

The new SEN reporting application has been designed to include a number of features that will make SIR and SPEAR reporting quicker and easier, as well as more secure and accurate. The web-based form will improve data quality as the design utilizes a number of "drop down menus" to constrict users to certain choices as they complete the form. Transmission security, reliability and speed will also be enhanced. Reports will be assigned a computer-generated SEN Incident Number that will be a valuable tracking tool for senders and receivers. Reports will move via the Intranet, and will be available to the IOC and Headquarters personnel immediately after completion and submission.

SIRs and SPEARs will also be automatically transmitted to the HQ/DRO Director, Assistant Director for Operations, Assistant Director for Management, Chief-of-Staff, all Deputy Assistant Directors, all Special Assistants and Intelligence Unit.

In addition, the new SEN application:

- Enables "cut and paste" ability for the narrative sections of the report
- Provides a single database repository for SEN data, including special programs data
- Offers expandable fields for narrative that provides easy editing and spell checking while maintaining a "form" formatting
- Eliminates E-Mail and Fax for the transmission of forms to IOC
- Eliminates re-keying of data into IOC database
- Provides IOC and management with immediate notification of SEN Reports
- Streamlines and centralizes application upgrades

The Significant Event Notification (SEN) application is intended to replace the legacy INS Microsoft Access based SIR application and the Word/e-mail SPEAR submission format. These methods of reporting SIRS and SPEARS should be discontinued as soon as possible. Our goal is that, by early January of 2005, all DRO offices will be using the new SEN application for submission of all SIRS and SPEARS.

For security purposes, user IDs and passwords will be required for access to the SEN application. FODs will designate Systems Control Officers (SCOs) who will assist the users in your offices in establishing their SEN accounts and in creating their individual IDs and passwords. HQ/DRO Staff Officer Rosalio Estrada will send your designated SCOs detailed instructions concerning the creation of SEN user IDs and passwords; plus other installation procedures. It is necessary that FODs make initial SCO assignments to officers directly below them so they will have rights to view all

information stemming from SEN reports created by their field office employees. To ensure that the transition is smooth and the IOC receives critical reporting without disruption **FODs should ensure that their SCOs immediately begin establishing accounts** for all personnel that need access to the system.

The new intranet application is available for preparing and transmitting SIRs and SPEARs as soon as users establish their user accounts and create their user IDs and passwords. However, to ensure a uniform transition we are asking that:

1. Officers do not begin using the system until advised to do so by the HQ/DRO Assistant Director for Operations.
2. SCOs should complete the process of establishing SEN accounts and assisting users in creating IDs and passwords as soon as possible but no later than COB, December 30, 2004.
3. The lead SCO for each FOD office send an e-mail message to Rosalio.Estrada@dhs.gov advising him once the SEN account establishment process is complete.

After the lead SCOs advise that the SEN account establishment process is complete, the HQ/DRO Assistant Director for Operations will advise the appropriate FOD when the Field Office can begin using the SEN system.

Once users have accounts, IDs and passwords, the SEN application is easily accessed at the following Intranet site: (b)(7)(E),(b)(6)

The HELP feature on the SEN home page at the site contains a very informative Users Guide prepared to facilitate familiarization with the new system, which is very user friendly. SIRs and SPEARs are prepared on and sent from the SEN Intranet site. Of particular note is the Print Preview feature that enables the user to print and review a completed report prior to submission. Keep in mind that the SEN application has been designed for use by all ICE components, so some of the captions are not applicable to DRO.

EMERGENCY FORMS: Every effort has been made to ensure the reliability of the new system. However, if problems should on occasion prevent intranet submissions via SEN, forms to facilitate SIR and SPEAR submissions to the IOC via FAX at (202) 514-7710 will be available on the ICE Intelligence (b)(7)(E) Intranet website. Most importantly is that SIRs and SPEARs reach the IOC and the designated HQ/DRO staff on a timely basis, regardless of methodology. The IOC main telephone number is (202) 616 (b)(6), (b)(7)(C)

General questions regarding the SEN application can be directed to George Clarke, (202) 514-8989, or (b)(6),(b)(7)(C) (202) 353 (b)(6), (b)(7)(C). Technical inquiries concerning the SEN application can be directed to (b)(6),(b)(7)(C) Technical Staff, (202) 514 (b)(6)

U.S. Department of Homeland Security
225 L Street, NW
Washington, DC 20536



U.S. Immigration
and Customs
Enforcement

MEMORANDUM FOR: James T. Hayes, Jr.
Director
Office of Detention and Removal Operations

THROUGH: Gregory J. Archambeault *Gregg J. Archambeault*
Assistant Director (Acting)
Enforcement

THROUGH: Michael T. Phillips *Michael T. Phillips*
Deputy Assistant Director (Acting)
Compliance Enforcement Division

FROM: (b)(6), (b)(7)(C)
Unit Chief, FOCS
Compliance Enforcement Division

SUBJECT: Humanitarian Resolution Procedures for Elderly Fugitives

Purpose

This memorandum proposes a procedure for resolving fugitive cases where the fugitive is seventy years old or older and non-criminal. It is proposed that the Fugitive Operation Support Center (FOCS) would be authorized to place this group of fugitives in a final order case category and place, "Deferred Action/Humanitarian Consideration" in Case Comments.

Background

There are Humanitarian Health concerns with fugitive aliens seventy years old or older that are non-criminal. Currently, this group of fugitive case remains in a fugitive cases category even if the Field has determined to utilize prosecutorial discretion. Leaving them in a fugitive case category skews the fugitive backlog number, as these cases should not be considered an active fugitive case.

Discussion

In furtherance of its mission, DRO's National Fugitive Operations Program's (NFOP) main responsibility is to promote public safety and national security by the continued pursuit of criminal fugitives; ensuring the location, arrest and case closure of all removable fugitive aliens through the fair enforcement of the nation's immigration laws.

The proposed removal of these cases (estimated 5,000 cases) from a fugitive case category to a final order case category will enhance the efficiency and effectiveness of the Fugitive Operations Teams by directing enforcement efforts towards more viable fugitive cases. This proposed procedure would provide a checklist for the FOCS staff to utilize as a guide in determining when an open fugitive case meets the criteria for placing it in a final order cases category. According to

~~LAW ENFORCEMENT SENSITIVE - FOR OFFICIAL USE ONLY~~

Page 2 - Humanitarian Resolution Procedures for Elderly Fugitives

this procedure, FOOSC supervisors will ensure compliance with the following requirements: (1) fugitive cases are seventy years of age or older and; (2) the fugitive is non-criminal.

It will be the responsibility of the FOOSC supervisors to review and approve all cases that meet this case category change criteria. The following priorities will never be designated for Case Category Change:

- I. Fugitives that pose a threat to national security.
- II. Fugitives that pose a threat to the community.
- III. Fugitives that are convicted of violent felonies.

The FOOSC staff assigned to the case will be responsible for updating EARM and the Fugitive Case Management System.

Recommendation

Approve the case category change procedure for non-criminal fugitives that are seventy years old or older, as directed by _____

Approve date: (b)(6),(b)(7)(C) Disapprove date: _____

Modify date: _____ Needs more discussion date: _____

~~LAW ENFORCEMENT SENSITIVE - FOR OFFICIAL USE ONLY~~

U.S. Department of Homeland Security
500 12th Street, SW
Washington, DC 20536



U.S. Immigration
and Customs
Enforcement

MEMORANDUM FOR: Field Office Directors
Deputy Field Office Directors

JAN 19 2010

FROM: (b)(6),(b)(7)(C)
Acting Director

(b)(6),(b)(7)(C)

SUBJECT: Documentation of Consent in Enter and Search

Purpose

This memorandum establishes guidance for Detention and Removal Operations (DRO) officers regarding documentation of consent to enter and/or search a premise, or other constitutionally protected location, when consent is required in accordance with the Fourth Amendment. The Detention and Removal Operations mission promotes public safety and national security by ensuring the departure of all removable aliens from the United States through the fair and effective enforcement of the nation's immigration laws. During the execution of this mission, officers often possess only administrative arrest authorities pursuant to a Warrant for Arrest of Alien (I-200). As such, officers will often find themselves in circumstances requiring informed, voluntary consent to enter and/or conduct a search of a residence, vehicle or other constitutionally protected location in compliance with the Fourth Amendment.

Discussion

When consent is required, the officer asking for such consent shall document the name of the person giving consent, the scope of the consent given, the time of day that the consent was given and other relevant factors such as the identity of any other individuals that witness the granting of consent. Additionally, officers should document the time the search was completed and, if consent is withdrawn, the time of such withdrawal. This documentation shall be included in the Field Operations Worksheet (FOW) as soon as it is practical after receiving consent. The FOW shall be kept with other investigative case related materials for future reference. Also, if an arrest is made, this information will be included in the narrative portion of the Record of Deportable Alien (Form I-213).

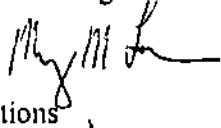
Additional inquiries, please contact the NFOP Unit Chief (b)(6),(b)(7)(C) at (202) 732-(b)(6) or email her at (b)(6),(b)(7)(C)

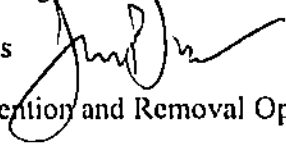


U.S. Immigration
and Customs
Enforcement

OCT 1 2007

MEMORANDUM FOR: All Special Agents in Charge and Field Office Directors

FROM: Marcy M. Forman 
Director
Office of Investigations

John P. Torres 
Director
Office of Detention and Removal Operations

SUBJECT: DRO/OI Protocols and Handling Unaccompanied Alien Children

On August 20, 2007, the Office of Investigations (OI) and Office of Detention and Removal Operations (DRO) jointly issued protocols providing national guidance to DRO Field Office Directors (FODs) and OI Special Agents in Charge (SACs) regarding a myriad of issues. The protocols did not specifically address the handling of unaccompanied alien children. Section 462 in Title IV of the Homeland Security Act defines the term "unaccompanied alien child" to mean a child who "(A) has no lawful immigration status in the United States; (B) has not attained 18 years of age; and (C) with respect to whom- (i) there is no parent or legal guardian in the United States; or (ii) no parent or legal guardian in the United States is available to provide care and physical custody."

While the apprehension and arrest of alien juveniles rests with U.S. Immigration and Customs Enforcement (ICE), DRO, and U.S. Customs and Border Protection (CBP), the responsibility for detaining and placement of unaccompanied alien children rests with the Office of Refugee Resettlement (ORR) within the Department of Health and Human Services. ORR has limited facilities to house children and has not yet developed a transport infrastructure. DRO Field Office Juvenile Coordinators (FOJCs) are responsible for coordinating the actual placement of juveniles with ORR. Both OI and DRO face formidable challenges and liability attempting to secure juveniles until ORR can find placements.

On September 10, 2007, DRO issued guidance to the FODs instructing them to support OI when a juvenile alien has been arrested and processed for immigration proceedings. DRO supervisors were instructed to have FOJCs immediately respond when OI makes notification that an alien juvenile has been arrested and processed for removal proceedings. FOJCs are then responsible for obtaining and facilitating the placement of an alien juvenile to the appropriate ORR shelter or facility. FOJCs will make all required travel and/or transportation arrangements to facilitate the juvenile's temporary transfer into DRO custody pending final ORR placement.

DRO will provide priority attention to unaccompanied alien children, including placement to an ORR-approved facility within 72 hours locally, and within 5 days outside of the local area of responsibility (AOR).

~~LAW ENFORCEMENT SENSITIVE - FOR OFFICIAL USE ONLY~~

Juveniles with criminal adjudications who are identified as "accompanied" will be placed in an approved ICE secure juvenile facility. If a juvenile has been convicted as an adult, FOJCs are to provide the detaining facility and DRO office with complete information regarding the conviction(s) and prior to, or as soon as possible following, the placement of the alien in an ICE facility. FOJCs will also assist with mandatory reunification efforts of any releasable alien juvenile to a family member or legal guardian per applicable provisions of 8 CFR § 236.3.

SACs will administratively process all unaccompanied juveniles prior to transfer to DRO custody. To facilitate this transfer, the current contact list for FOJCs is attached. The FOJCs may be unable to respond to simultaneous calls within their AOR. Therefore, SACs will meet with FODs to identify and remedy transportation deficiencies within their AOR and will jointly identify solutions using the coordination, de-confliction, transportation, and conflict resolution portions of the DRO/OI protocols.

OI and DRO will continue to work with CBP and ORR on a long-term solution of handling unaccompanied children and will issue further guidance as appropriate.

**Detention and Removal Operations
Juvenile Coordinator Contact List - Sept 2007**

Field Office		Fax Number	
ANCHORAGE		907-271-1295	
ATLANTA			
BALTIMORE		404-331-5364	
BOSTON-CT,VT,ME		410-962-7430	
BOSTON-MA,RI,NH		410-962-7430	
BUFFALO		410-548-2461	
CHICAGO		860-240-3036	
CLEVELAND		617-565-1570	
DALLAS		716-551-5628	
DENVER	(b)(6),(b)(7)(C)	716-551-5628	
DETROIT		312-347-2114	
EL PASO		312-356-4518	
HARLINGEN		614-469-5100	
HOUSTON		216-706-0010	
KANSAS		214-805-5592	
LOS ANGELES		214-905-5582	
MIAMI		303-361-0694	(b)(6),(b)(7)(C)
MEMPHIS		303-361-0493	
NEWARK		303-361-0493	
		313-568-6052	
		915-225-1995	
		915-225-1995	
		956-389-7863	
		858-389-7863	
		281-774-5993	
		281-774-5993	
		816-891-7398	
		816-891-7398	
		714-836-3047	
		714-836-3047	
		305-530-7070	
		305-762-3347	
		901-544-0271	
		901-544-0271	
		973-693-4909	
		973-693-4909	

Field Office	Primary FOJC Name	Back-Up FOJC Name	Desk Phone	Ext#	Cell Phone	SDDO	Fax Number	Mailing Address
NEW YORK	(b)(6),(b)(7)(C)	(b)(6),(b)(7)(C)	(b)(6),(b)(7)(C)	(b)(6),(b)(7)(C)	(b)(6),(b)(7)(C)	(b)(6),(b)(7)(C)	212-620-7757	(b)(6),(b)(7)(C)
NOL (BP)							212-264-3991	
NEW ORLEANS							225-298-5505	
OMAHA							504-589-4442	
PHILADELPHIA							504-589-2661	
PITTSBURGH							402-536-4873	
PHOENIX							402-536-4873	
PORTLAND							610-374-9810	
SALT LAKE CITY							610-374-8810	
SAN ANTONIO							412-432-2193	
SAN DIEGO							602-379-4021	
SAN FRANCISCO							602-379-4021	
SAN JUAN							503-326-7183	
SEATTLE							503-326-7185	
ST. PAUL							801-265-8693	
TAMPA							406-495-2171	
WASHINGTON							210-967-7096	
HQ/DRO/Natl JC							210-967-7096	
							619-557-7880	
							619-557-7880	
							415-844-5514	
							415-844-5514	
							787-706-2332	
							787-706-2332	
							402-536-4873	
							952-853-2549	
							813-637-3057	
							703-285-6236	
							703-285-6236	
							202-732-2878	
							202-732-2881	
							202-732-2881	



**U.S. Immigration
and Customs
Enforcement**

Enforcement and Removal Operations

**EABM I-44
PROCESSING GUIDE**

All processing should be in concurrence with the most recent ERO processing guides for the current Enforcement Integrated Database (EID) modules (i.e. EABM, EARM). This addendum is meant to provide further guidance in the processing of an I-44 (Record of Apprehension or Seizure) in conjunction with the ERO Evidence Directive- Enforcement Property Protocols.

1. Ensure that you log into the EID (i.e. ENFORCE) with your assigned program code and your assigned site.
2. When creating an event for the property use:
 - a. VCS for the lead type
 - b. CAP for the event type
 - c. VCS for the program

All other information inputted will be as appropriate as per the current ERO processing guide and your local procedures.

(b)(7)(E)

.

3. Select I-44 from the Enforce Menu.

(b)(7)(E)

Begin populating the I-44 with the required information:

4. Enter the event data and time
5. Enter the G-23 line if applicable. Utilize the current ERO processing guide for a list of values
6. Sector #:Enter the DHS-6051 number
7. Enter the Apprehending Officer
8. Name, Address: Input the name and address of the person or entity to which the property or the arrested person will be turned over.
 - a. If ERO is detaining property input the Field Office Director and address
 - b. If turning the property over to another agency that Agency name and address is to be inputted.
9. Apprehended or Interviewed: Enter the appropriate selection. If there is no person associated enter none.
10. Arrest: Follow the current ERO processing guide procedures for this section.
11. Assisting Agencies: click and enter any assisting agencies
12. Received Office or Agency; Received by, Title, and Date: input the office and officer responsible for assuming custody of the property
13. Save this information. .

(b)(7)(E)

14. Click Narrative
15. Choose I-44
16. This will create a Record of Investigation. Follow any current guidance on the writing of a proper narrative. **Note: This narrative is not meant to determine alienage but to provide a chain of evidence for the property.**
17. Click Save
18. Click the Green Arrow

(b)(7)(E)

19. Click the Add property button

(b)(7)(E)

20. Choose the corresponding subcategory that designates the type of seized, abandoned, or forfeited property encountered.

- a. In this handbook a firearm will be used as an example, however the procedures for all tabs correspond with the following instructions.
- b. *****Note: Do not enter detainee or personal property related to a subject in this screen**

(b)(7)(E)

21. Enter the property type
 22. Use the drop down to select caliber, firearm
 23. Be sure to input the descriptions of all to be as specific as possible.
 24. Enter the Manufacturer
 25. Enter the Model
 26. Enter the Serial number
- ** note this is a chain of evidence and all information should be double checked.**

(b)(7)(E)

27. Use the "Seized / Recovered" dropdown to select the appropriate action and date the action occurred.
28. Enter the method of seizure: this will be the same as the arrest methods used in the ERO Processing guide.
 - a. If found during a fugitive operations where the target is located : "L"
 - b. If found during an at large operation: "NCA"

(b)(7)(E)

29. Found At: Enter the location that the seized, forfeited, or abandoned property was discovered.
30. Final INS Disposition: Select turned over to other Agency even if it is staying within ERO
31. Enter the date of the disposition
32. Click Evidentiary if to be used in a prosecution
 - a. Contact your local AUSA for an appropriate exhibit number if/when applicable.
33. Contraband: select the appropriate radio button
34. Turned Over to Other Agency: Select "Other Federal Agencies and Locations" from the drop-down to designate who ERO turned the property over to.

(b)(7)(E)

35. Click Save

36. Select Assist Agencies if any other agency participated in the event

(b)(7)(E)

37. Use the "Assist Agencies" button to enter other agencies that may have assisted ERO.
38. Click Save
39. Click the green arrow

(b)(7)(E)

40. Click Confiscated by:

41. Enter the officer's name that confiscated the property.

42. Click save

(b)(7)(E)

43. Click Inventoried By:

44. Enter the name of the officer / agent that inventoried the property.

a. This does not have to be the same officer / agent that seized the property.

45. Click Save

(b)(7)(E)

46. Click Associate if there is a person to associate the property.
47. Enter the appropriate association.
48. Click save

(b)(7)(E)

(b)(7)(E)

49. Enter any miscellaneous identifying numbers associated with the property.
50. Click save

(b)(7)(E)

U.S. Department of Homeland Security
500 12th Street, SW
Washington, D.C. 20536



U.S. Immigration and Customs Enforcement

MEMORANDUM FOR:

Field Office Directors
Deputy Field Office Directors
Deputy Assistant Directors

SEP 04 2009

FROM:

(b)(6),(b)(7)(C)
Acting Director

(b)(6),(b)(7)(C)

SUBJECT:

Designation of Cold Case Fugitive
Files and the Creation of a
Fugitive Docket for the Fugitive
Operations Support Center

Purpose

This memorandum establishes the Standard Operating Procedure (SOP) for designation of Cold Case Fugitive (CCF) files and creates a Fugitive Operation Support Center (FOSC) docket. Currently, all fugitive alien files are designated as active cases in field investigative status and considered part of the fugitive alien backlog regardless of case viability. Pursuant to this memorandum, CCF files will be removed from active field investigative status and will be assigned to a cold case docket assigned to FOSC; thereby eliminating cold cases from the fugitive alien backlog. The creation of CCF files and a corresponding FOSC docket redirects field enforcement efforts toward viable fugitive cases.

Background

The National Fugitive Operations Program's (NFOP) primary mission is to reduce the fugitive alien backlog in the United States. A fugitive alien case is removed from the backlog when one or more of the following occurs: i) the target is arrested; ii) it is determined that the target has self-removed; iii) it is determined that the target is currently incarcerated; iv) the target's immigration status has changed and is no longer removable; or. v) the target has died. Currently, absent any of the aforementioned events, a case remains part of the fugitive alien backlog and on field dockets regardless of: i) the age of the case; ii) lack of identifying information; or. iii) lack of viable information on the target.

51. Print the form:

- a. Press the "Select Prop / Subj" button
- b. Under Contraband Merchandise or Other select "Prt?" and "Other Blk"
 - i. If you have multiple items, only select the ones that you want to print on the I-44.

****Print separate forms for property and people if there is a person that is to be turned over to another agency.**

(b)(7)(E)

If the subject is going to be turned over to another agency:

52. Under subject: select "Prt?" and "Name Blk"

a. If you have multiple subjects, only select the ones that you want to print on the I-44.

53. Use the "Print" button next to the "Narrative" button to print the I-44.

(b)(7)(E)

Your I-44 is now complete: All signed copies should be retained in the A file or prosecution file if applicable.

U.S. Department of Homeland Security
225 L Street, NW
Washington, DC 20536



U.S. Immigration
and Customs
Enforcement

MEMORANDUM FOR: James T. Hayes, Jr.
Director
Office of Detention and Removal Operations

THROUGH: Gregory J. Archambeault *Greg J. Archambeault*
Assistant Director (Acting)
Enforcement

THROUGH: Michael T. Phillips *Michael T. Phillips*
Deputy Assistant Director (Acting)
Compliance Enforcement Division

FROM: (b)(6), (b)(7)(C)
Unit Chief, FOOSC
Compliance Enforcement Division

SUBJECT: Humanitarian Resolution Procedures for Elderly Fugitives

Purpose

This memorandum proposes a procedure for resolving fugitive cases where the fugitive is seventy years old or older and non-criminal. It is proposed that the Fugitive Operation Support Center (FOOSC) would be authorized to place this group of fugitives in a final order case category and place, "Deferred Action/Humanitarian Consideration" in Case Comments.

Background

There are Humanitarian Health concerns with fugitive aliens seventy years old or older that are non-criminal. Currently, this group of fugitive case remains in a fugitive cases category even if the Field has determined to utilize prosecutorial discretion. Leaving them in a fugitive case category skews the fugitive backlog number, as these cases should not be considered an active fugitive case.

Discussion

In furtherance of its mission, DRO's National Fugitive Operations Program's (NFOP) main responsibility is to promote public safety and national security by the continued pursuit of criminal fugitives; ensuring the location, arrest and case closure of all removable fugitive aliens through the fair enforcement of the nation's immigration laws.

The proposed removal of these cases (estimated 5,000 cases) from a fugitive case category to a final order case category will enhance the efficiency and effectiveness of the Fugitive Operations Teams by directing enforcement efforts towards more viable fugitive cases. This proposed procedure would provide a checklist for the FOOSC staff to utilize as a guide in determining when an open fugitive case meets the criteria for placing it in a final order cases category. According to

~~LAW ENFORCEMENT SENSITIVE - FOR OFFICIAL USE ONLY~~

Page 2 - Humanitarian Resolution Procedures for Elderly Fugitives

this procedure, FOOSC supervisors will ensure compliance with the following requirements: (1) fugitive cases are seventy years of age or older and; (2) the fugitive is non-criminal.

It will be the responsibility of the FOOSC supervisors to review and approve all cases that meet this case category change criteria. The following priorities will never be designated for Case Category Change:

- I. Fugitives that pose a threat to national security.
- II. Fugitives that pose a threat to the community.
- III. Fugitives that are convicted of violent felonies.

The FOOSC staff assigned to the case will be responsible for updating EARM and the Fugitive Case Management System.

Recommendation

Approve the case category change procedure for non-criminal fugitives that are seventy years old or older, as directed by the following:

Approve date: (b)(6), (b)(7)(C) Disapprove date: _____

Modify date: _____ Needs more discussion date: _____

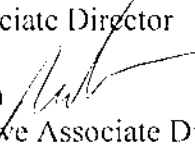
U.S. Department of Homeland Security
500 12th Street, SW
Washington, D.C. 20536

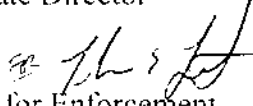
JUL 29 2011



U.S. Immigration
and Customs
Enforcement

MEMORANDUM FOR: Gary Mead
Executive Associate Director

THROUGH: Thomas Homan 
Deputy Executive Associate Director

FROM: Gregory J. Archambeault 
Acting Assistant Director for Enforcement

SUBJECT: Enforcement and Removal Operations Encounter Policy

Purpose

This memorandum requests approval of the Enforcement and Removal Operations (ERO) policy relating to documenting foreign born national encounters in the Enforcement Integrated Database (EID).

Background

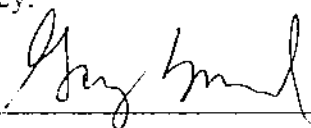
Beginning in 2009, the Office of Inspector General (OIG) conducted a review of the Criminal Alien Program (CAP). This review analyzed the effectiveness of the program in state facilities. In November of 2010, OIG issued a draft report of the findings along with recommendations. On February 10, 2011, the report, recommendations, and ICE responses became public.

Discussion

Recommendation 2 of the OIG report required that all screenings and identifications of foreign-born individuals incarcerated in Federal, State and local correctional facilities be documented and recorded in ENFORCE. Immigration and Customs Enforcement (ICE) concurred with this recommendation and wrote the attached policy that requires all screenings and identifications of foreign-born nationals be entered into the EID. The EID is a repository of all information entered through, ENFORCE, the EID Arrest GUI for Law Enforcement (EAGLE) and Customs and Border Protection's E3 database. Revisions of the ERO processing guide will be drafted once the policy is implemented in order to provide additional direction in support of this policy.

Recommendation

The Enforcement Division recommends approval and implementation of the attached ERO Encounter Policy.

Approve/date  Disapprove/date _____

Modify/date _____ Needs more discussion/date _____

Attachment

**U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT
AND REMOVAL OPERATIONS**

Policy Number: **Enforcement and Removal Encounters**

Issue Date:

Effective Date:

Review/Expiration Date:

Superseded: None

Federal Enterprise Architecture Number:

1. **Purpose/Background.** This directive identifies requirements and provides general procedures for using the Enforcement Integrated Database (EID) as ERO's electronic system of records for administrative processing of foreign born nationals. EID is the U.S. Department of Homeland Security's (DHS) shared database repository for several DHS law enforcement and homeland security applications and is currently accessed through the (b)(7)(E) application.
- 1.1 The purpose of the directive is to support the identification and arrest of individuals (both citizens and noncitizens) who commit violations of Federal criminal laws enforced by DHS.
2. **Policy.** All ERO law enforcement officers will document foreign born national encounters in the EID (e.g., using the (b)(7)(E) application).
3. **Definitions.**
 - 3.1. *Encounter:* the interview, screening, and determination of citizenship, nationality, and legal rights of any person in the United States at any time.
 - 3.2. *Interview:* a formal meeting in which a law enforcement officer questions a person believed to be an alien about citizenship, nationality, and the legal right to be in the United States.
 - 3.3. *Screening:* the process of verifying the identity of a person through biographic and or biometric identifiers.
 - 3.4. *Biographic identifiers:* personal information obtained from a person or third party (e.g., name, address, social security number, driver's license).
 - 3.5. *Biometric identifiers:* identity analysis of physical samples obtained from a person or provided by a third party (e.g., fingerprints).

3.6. *Enforcement action*: a law enforcement activity (e.g., encounter, investigative detention, arrest, bond) taken by DHS to address criminal or administrative violations.

4. Responsibilities.

4.1. The *Criminal Alien Division* is the Office of Primary Interest and is responsible for managing and overseeing compliance to this Directive.

4.2 All ERO law enforcement officers who encounter persons are responsible for documenting that encounter in the Enforcement Integrated Database (e.g., by using (b)(7)(E)).

5. Procedures.

5.1. Law enforcement officers:

- 1) Document encounters in the Enforcement Integrated Database (e.g., by using (b)(7)(E)).
- 2) Create only one encounter based on the same enforcement action for the same person. Enter any crime information necessary to correctly indicate a foreign born national's criminal offense level (e.g., in (b)(7)(E) through the CRIME ENTRY SCREEN).
- 3) Input as an encounter subjects found through investigation to be derived or naturalized citizens.
- 4) If you determine that a person initially detained as a possible alien is a United States citizen, notate the record with your determination and state that no further action will be taken.
- 5) Do not enter information about U.S. citizens interviewed or screened unless being investigated or arrested for administrative or criminal immigration law violations.

6. Authorities/References.

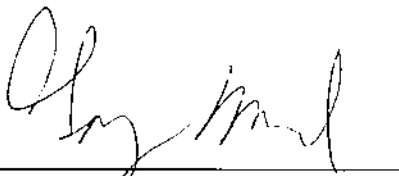
6.1. 6 U.S.C. §§ 101- 103, 111-113

6.2. 8 U.S.C. § 1357

6.3. 40 U.S.C. § 1315

6.4. 8 C.F.R. § 287

- 6.5. Immigration and Enforcement Operational Records System of Records, 75 Fed. Reg. 23,276 (May 3, 2010), *available at* <http://edocket.access.gpo.gov/2010/2010-10286.htm>.
- 6.6. Privacy Impact Assessment for the Enforcement Integrated Database (EID) (January 14, 2010), *available at* <http://tinyurl.com/4llxoga>.
- 6.7. Memorandum from David J. Venturella on Fiscal Year 2010 Criminal Alien Program Goals to Field Office Directors and Deputy Field Office Directors (Jan. 5, 2010) *available at* [2010_01_05_fy2010cap-goals.pdf](#)
7. **Attachments.** None
8. **No Private Right Statement.** This Directive is an internal policy statement of ICE. It is not intended to, and does not create any rights, privileges, or benefits, substantive or procedural, enforceable by any party against the United States; its departments, agencies, or other entities; its officers or employees; contractors or any other person.



Gary Mead
Executive Associate Director
Enforcement and Removal Operations
U.S. Immigration and Customs Enforcement



U.S. Immigration
and Customs
Enforcement

July 3, 2008

MEMORANDUM FOR: All Field Office Directors
All Special Agents in Charge
Julie L. Myers
FROM: Julie L. Myers
Assistant Secretary
SUBJECT: Field Guidance on Enforcement Actions or Investigative Activities
At or Near Sensitive Community Locations

ICE personnel should refrain from conducting enforcement actions or investigative activities at or near sensitive community locations such as schools, places of worship, and funerals or other religious ceremonies, except in limited circumstances as set forth within this memorandum. Such restraint strikes a balance between our law enforcement responsibilities and the public's confidence in the way ICE executes its mission.

Precedent for this approach is clear. Under Immigration and Naturalization Service (INS) Policy HQ 807-P, Enforcement Activities at Schools, Places of Worship, or at funerals or other religious ceremonies (May 17, 1993), law enforcement personnel were directed to:

"[A]ttempt to avoid apprehension of persons and to tightly control investigative operations on the premises of schools, places of worship, funerals and other religious ceremonies."

ICE policies are in place to ensure that our personnel conduct enforcement operations in a manner that is safe and respectful of all persons. This policy was recently reinforced in a December 26, 2007 Memorandum from Marcy M. Forman, Director, Office of Investigations, entitled Enforcement Actions at Schools. This field guidance clearly states that ICE views these actions with particular sensitivity:

"[I]t is important to emphasize that great care and forethought be applied before undertaking any investigative or enforcement type action at or near schools, other institutions of education, and venues generally where children and their families may be present."

Policies governing ICE Office of Detention and Removal (DRO) Fugitive Operations Teams have similarly discouraged enforcement actions in these sensitive locations. Furthermore, all of our enforcement actions have been, and should continue to be, thoroughly planned, reviewed, and approved by senior field office personnel so that both the public's safety and our national security are guaranteed.

SUBJECT: Designation of Cold Case Fugitive Files and the Creation of a Fugitive Docket for
the Fugitive Operations Support Center

Page 2

Discussion

To be eligible for CCF status, the case must meet the following criteria:

- The last known address is older than 10 years and/or there is no last known address; and,
- All investigative leads have been exhausted and there have been no significant investigative leads or active developments on the case for the previous ten consecutive years; or,
- No identifying biometric documents (i.e. fingerprints or photographic images) can be located following a thorough search of all appropriate Department of Homeland Security (DHS) and open source databases; thereby exhausting all investigative leads.

The following priorities will never be eligible to be designated as a Cold Case and eligible for CCF status:

- I. Fugitives that pose a threat to national security
- II. Fugitives that pose a threat to the community
- III. Fugitives that are convicted of violent felonies

Initial Transfer of Cases to the CCF Docket

Upon implementation of this policy, FOSC will create a three letter docket control office (DCO) code that will designate a case in EARM as a CCF file. The three letter DCO code will be "FOS." Once the FOS code is created and included in EARM, FOSC will establish the initial baseline for creation of CCF files by performing extensive queries on numerous data sources (e.g. [REDACTED] (b)(7)(E), etc). The data source queries will determine case eligibility for CCF designation in accordance with all docket control policies and procedures in common use throughout the country.

After FOSC identifies a case as a CCF case, FOSC will notify the respective field office. The field office will maintain a copy of the work folder in an area accessible to the field office and transfer the physical file to the National Records Center (NRC). FOSC will also forward a list of cases designated as CCF cases to the Statistical Tracking Unit, which will perform a batch EARM change from the current DCO designation to the new FOS designation. Once a case has been designated as an FOS case in EARM, the case will become part of the FOSC docket. Once a case becomes a part of the FOSC docket, it will no longer be considered part of the fugitive alien backlog.

Standards for CCF Designation Following Initial Transfer Period

Field Office Responsibilities

After the initial transfer of CCF cases to the FOSC docket, each individual field office will be responsible for designating cases as CCF cases and assuring their proper handling. The case officer should complete the following prior to initiating a CCF file designation:

While ICE policies and procedures do not specifically preclude enforcement actions or investigative activities at the aforementioned locations, the direction of INS HQ807-P remains in effect.

Consistent with these policies, including INS HQ807-P, there may be specific situations requiring ICE personnel to act at or near sensitive locations. Such situations would include those involving terrorism-related investigations, matters of public safety, or actions where no enforcement activity is involved, such as requesting information from school officials, retrieving records, or otherwise routine, non-enforcement activity. Any such case must be raised to the appropriate Headquarters program office prior to any action or, in exigent circumstances, as soon as practicable. Moreover, personnel are reminded to be cognizant of the impact of their activity, exercise good judgment and act with an appropriate level of compassion in light of the location while exercising their authority in such circumstances.

This policy should not be construed as an indication of tolerance for any violations of the law by anyone at or in charge of any of these sensitive locations. A formal ICE Policy Directive providing policy and procedures for these enforcement actions and/or investigative activities will be issued in the near future.

U.S. Department of Homeland Security
425 I Street, NW
Washington, DC 20536



U.S. Immigration
and Customs
Enforcement

MEMORANDUM FOR: ALL FIELD OFFICE
DIRECTORS

AUG 28 2005

FROM: John P. Torres
Acting Director

A handwritten signature in black ink, appearing to read "John P. Torres".

SUBJECT: Placement of Fugitive Cases into the National Crime
Information Center's Immigration Violator File

Purpose

This memorandum restates the requirement of placing fugitive cases into the National Crime Information Center's (NCIC) Immigration Violator File (IVF).

Background

In August 2002, headquarters, Office of Detention and Removal Operations (DRO), promulgated the *Absconder Apprehension Initiative, Standard Operating Procedure* (AAI/SOP) pursuant to the direction received from the issuance of the Absconder Apprehension Initiative (AAI), initiated by the Department of Justice, Deputy Attorney General in January¹ of 2002. A large part of the AAI was to utilize the NCIC as a means to utilize assets from other federal, state and local law enforcement agencies (LEAs) as a force multiplier in the identification, location and apprehension of absconders/fugitives.

Part of the AAI/SOP established the protocol for sending cases to the Law Enforcement Support Center (LESC) for entry into NCIC. While the protocol for placement of cases into NCIC may have changed, the need to do so in a timely manner has not. Section II, Paragraph A of the AAI/SOP states:

¹The AAI was divided into two separate and distinct phases. Phase One (AAI-1) was identified as that operation which dealt with an initial group of aliens from countries of special interest. The primary purpose of AAI-1 was to gather intelligence in the defense of our national security. AAI-1 was the responsibility of our Investigations Division. AAI, Phase Two (AAI-2) was the responsibility of DRO; its objective was to locate, apprehend and remove absconder aliens from the United States. AAI-2 was a part of the then INS' overall National Fugitive Operations Program which was designed to address the problem of locating, apprehending, prosecuting and/or removing aliens who have violated the nation's immigration laws. This includes the backlog of absconders, accrued over many years, of aliens with unexecuted deportation or removal orders.

Subject: Placement of Fugitive Cases into the National Crime Information Center's (NCIC) Immigration Violator File (IVF). Page 2

In order to avoid an increase in the backing of AAI cases, district DR-0 officers shall attempt to locate and apprehend all aliens for whom a final order is received. If field units are unsuccessful in locating and apprehending the alien within 120 days of the date of the final order, the alien will be considered an absconder and the case will be sent LO the LESC ("or NCIC entry in accordance with the procedures below. *Supervisors are reminded that the entry of a case into NCIC does not preclude officers from continuing attempts to locate the fugitive.*

A-Files should be shipped to the LESC as soon as 120 days have elapsed from the date of the final order. However, A-files may be held for up to a week for batch shipment. Other extension requests will be considered on a case-by-case basis by the AAIC. For such cases, the Assistant District Director (ADD¹) in charge of the program requesting the extension will prepare a memorandum to the, AATC setting forth the reasons for the request and specify a length of time required for the extension. An extension will only be granted by the AAIC for those cases in which the location and apprehension of the absconder is imminent. "Imminent" is to be interpreted as two weeks or less.

Discussion

The purpose for placing cases into NCIC has not changed. There is still a need to utilize the resources of other federal, state and local law enforcement agencies to assist in the identification, location and apprehension of absconders and fugitives. Cooperation with other LEA's creates a higher probability of a successful apprehension rather than returning the A-file to the shelf in the local field office when the officer has no further actionable leads.

Field Office Directors (FODs) should be cautioned against keeping fugitive A-files beyond the recommended time period. Each team has a target of closing a minimum of 500 fugitive cases per year. For teams whose officers have become adept at locating fugitives, this number could double. However, maintaining several thousand cases, on site, per fugitive team, is not a good practice and hampers the AAI concept of using other LEA's as a force multiplier.

Action

FODs will immediately conduct a review of all absconder/fugitive files in their offices in order to identify those cases that meet the requirements as indicated above in the AAI/SOP guidelines. The FODs will then determine based on the attached LESC "ICE7NCIC Warrant Entry Requirements," which A-files may be sent immediately to the LESC for entry into NCIC. Under no circumstances will an A-file be sent to the LESC that does not meet the attached requirements. Without exception, A-files will be up-to-date and complete prior to shipment. Additionally, for those cases where it is difficult to obtain the required information and documentation, the FODs will ensure that these cases do not languish. In these cases, the FODs may request assistance from the Fugitive Operations Support Center (FOSC)¹ for assistance by telephoning (802) 660-(b)(6). The FOSC may have access to databases and other resources, which can assist the FODs in this requirement. The FODs may

¹ The ADD referred to in this quote has been redesignated as the Field Office Director (1-OD) under the current ICE/DR.0 organizational chart.

The FOSC is an operational component of the National Fugitive Operations Program, Headquarters, Fugitive Operations Unit. It is co-located with the LESC and will provide background and in-depth investigative checks for NFOP officers as well as any other ICE, CI3P or outside law enforcement agency (LEA) officers who are conducting investigations or routine checks on suspected ICE fugitives. It also acts as a fusion center whereby analysts will combine leads from several sources and fuse them into workable field leads for the NFOP field teams.

Subject: Placement of Fugitive Cases into the National Crime Information Center's (NCIC) Immigration Violator File (IVF). Page 3

divert clerical/administrative help from other areas in order to accomplish this task and are encouraged to assign general docket deportation officers to assist in the review of old cases that were part of their dockets, prior to shipment to the fugitive unit for action.

Any cases that fall within the period of time for shipment to the LESC and the local fugitive team believes still has leads to pursue, the FQD should direct that the A-file be copied and sent forward for entry into NCIC; with the work folder copy retained at the local office. Any documents generated after the A-file has been sent to the LESC, must be sent onto the LESC for inclusion in the A-file. If the FOD has a requirement for access to an A-file at the LESC, the FQD should contact the FOSC for assistance in obtaining the necessary documentation.

Any questions regarding this guidance can be directed to (b)(6),(b)(7)(C) Unit Chief of Fugitive Operations, in headquarters DRO, at (202) 353-(b)(6) or by email at (b)(6),(b)(7)(C)

Attachment:

ICE/NCIC Warrant Entry Requirements

ICE/NCIC Warrant Entry Requirements

Criminal Warrant (WFF) entries:

Required Documents for entry:

- Criminal Warrant for the subject needs to be provided, signed by a US Magistrate
- Copy of the Complaint and/or Affidavit
- Customs Form-59, if applicable
- (if available); 1-215 / G-166 / 1-166 (for identifiers, etc.)
- Fingerprints recommended but; NOT required
- A 'Unique Identifier(s) " REQUIRED, i.e.. (Clear Photo, Scars/Marks & Tattoos,etc.)

The A-File is not needed to enter a criminal warrant into NCIC, but If you have the A-file and will release it to us please send it FEDEX to the address below.

When using the CF59 select read only and you will be able to fill in the form with all pertinent information.

The CF59, Criminal Warrant and any other pertinent information can be faxed to the LESC, NCIC Unit, Attention: NCIC Supervisor at (307.) 872 (b)(6). It may be easier to email the photo's and prints for clarity reasons to the supervisor on duty.

Mailing address;

Law Enforcement Support Center TB8
Harvest Lane Williston, VT 05495
Phone 802 672 (b)(6)
Fax 802 872 6047

Note: If you cannot get through to our primary fax machine (802 872-6047), please send to our secondary fax(s) (802 288 1220/1222) and attention the fax to NCIC Supervisor.

Deported Felon (DFF) entries;

Subject must meet the following (2) two criteria:

1. FBI number
 2. Criminal Record
- Note: Must be an aggravated felon.

Field Office responsibilities:

- CIS and DACS will have been updated to reflect the deportation/removal,
- All IMS databases will be checked for any unconsolidated A-Files.
- All INS databases are complete, accurate, and up to date.
- The A-file has the necessary information;
 - o Completed I-205 (WITH PRINT) or related documentation(if available): I-213 / G-166 / I-166 Does not have to be the 'latest document' as long as one of these documents is in the A-File (for identifiers, etc.)
 - o I-166 - Nor. a required document for record creation O 10 Print Card Photo, if not already attached to the Removal Document.

The LESC Communication Center responds to the 'Hits' for the entries in NCIC, therefor the I-205 is required for on-site Hit Confirmation by the Special Agent on duty and CODING (entry) into NCIC as stated above.

The LESC must have the A-file for this entry, please Fedex the file to the LESC attention NCIC Unit..

Please find the attached CF59 that should be attached to the front, of the A-file jacket. This same worksheet is also used for any modifications and/or CLEAR requests:

(Same Form As Above)

When using the CF59 select read only and you will be able to fill in the form with all pertinent information.

Mailing address:

Law Enforcement Support Center 188
Harvest Lane Williston, VT 05495
Phone 802 872 (b)(6) Fax 902
872-6047

Note: If you cannot get through to our primary fax machine (802 872-604*7), please send to our secondary fax(s) (802 288-1220/1222) and attention the Fax to NCIC Supervisor.

Absconder (AAI) entries: Field

Office responsibilities:

- All INS databases will be checked for any unconsolidated A-Files,
- All INS databases are complete, accurate, and up to date.

Administrative:

- I-205 signed on front, indicating removal was ordered(if available): I 213 / G 166 / I 156 (for identifiers, etc.)

- T-166 Net a required document for record creation
- 10 Print Card
- Photograph(s)

The LESC Communication Center responds to the "Hits" for the entries in NCIC, therefore the A-file is required for on-site Hit Confirmation by the Special Agent on duty and CODING (entry) into NCIC as stated above. The LESC must have the A-file for this entry, please Fedex the file to the LESC attention NCIC Unit,

Please find the attached CF59 that should be attached to the front of the A-file jacket. This same worksheet is also used for any modifications and/or CLEAR requests:

(Same Form As Above)

When using the CF59 select read only and you will be able to fill in the form with all pertinent information.

Mailing address:

Law Enforcement Support Center
188 Harvest Lane Williston, VT
05495 Phone 802 872 (b)(6),
Fax 802 872-6047

Note: If you cannot get through to our primary fax machine (802 872-6047), please send to our secondary fax(s) (802 288-1220/1222) and attention the fax to SCIC Supervisor.

A File Information:

All A-Files MUST BE FORWARDED to the Law Enforcement Support Center for CODING (entry) of Deported Felon (DFF) and Absconder (AAI) records into NCIC.

If your office needs copies of any information from the file to continue with your local investigation, it is suggested that a Work Folder be created-

U.S. Department of Homeland Security
425 I Street, NW
Washington, DC 20536



U.S. Immigration
and Customs
Enforcement

JUL 14 2006

MEMORANDUM FOR: Field Office Directors

FROM: John P. Torres
Acting Director

A handwritten signature in black ink, appearing to read "John P. Torres", written over the printed name.

SUBJECT: Escape Reporting

1. PURPOSE AND SCOPE

This directive requires that the escape of an alien from U.S. Immigration and Customs Enforcement, Detention and Removal Operations (ICE/DRO) custody be reported, tracked, and investigated. It applies to **Field Offices** and all facilities housing ICE/DRO detainees.

While the procedures in this directive are applicable to the escape of a juvenile alien, more detailed requirements may also be found in Chapter 8 of the **Juvenile Protocol Manual**, referenced below.

The expected outcomes of this directive are:

- Appropriate law enforcement officials will be immediately notified of the escape of an alien from ICE/DRO custody.
- The respective Field Office will be immediately notified of an escape.
- Each escape will be tracked through the National Escape Tracking System (NETS).
- Each escape of a juvenile alien will be reported to the Headquarters National Juvenile Coordinator.
- Each escape of an alien will be investigated by the respective Field Office Director.
- The investigation report of every escape incident will be reviewed by the ICE / DRO Headquarters Detention Management Division.

2. AUTHORITIES/REFERENCES

American Correctional Association 4th Edition Standards for Adult Local Detention Facilities: 4-ALDF-1C-05.

ICE/DRO Detention Standard on **Emergency Plans** that requires that each facility have in place contingency plans to respond quickly and effectively to escape situations and that staff be initially and annually trained on those plans.

ICE/DRO Detention Standard on **Transportation** that details requirements if a detainee escapes while being transported.

ICE/DRO Juvenile Protocol Manual.

3. SUPERSEDED/CANCELLED POLICY

This is a new directive that incorporates the requirements for escape reporting originally communicated via e-mail dated 8/9/2004 from the Deputy Assistant Director, Removal Management Division.

4. PROCEDURES

A. Initial Facility Response and Notification

The facility administrator shall:

1. Implement local facility escape procedures and immediately notify local, state, and federal law enforcement officials, as required by the Detention Standard on **Emergency Plans**.
2. Ensure that the respective Field Office is immediately notified. Ordinarily, in a Contracted Detention Facility (CDF), notification will be through the facility's ICE/DRO Contracting Officer Technical Representative (COTR) and, in an Inter-Governmental Service Agreement (IGSA) facility, the ICE/DRO representative.
3. Within one hour of discovery, the escape shall be reported to the nearest U. S. Marshals Service office if the escapee was:
 - Convicted of a criminal violation, and/or
 - Paroled for deportation prior to the completion of his or her sentence.
4. For a **juvenile alien**, the Field Office Juvenile Coordinator must also be notified. The Field Office Juvenile Coordinator is required to notify the Headquarters National Juvenile Coordinator.

B. Field Office Notification and Reporting

The Field Office shall:

- Immediately report the escape through the Significant Incident Reporting (SIR) system.
- Within 24 hours, forward an Escape Report (Attachment A) to DRO Headquarters, Detention Management Division.

C. National Escape Tracking System (NETS)

The Detention Management Division shall maintain a National Escape Tracking Database (NETS) that tracks each escape by its assigned NETS number.

All further correspondence regarding the escape must reference the NETS number.

D. Field Office Investigation and Recommendations

The Field Office Director shall conduct an investigation into the circumstances of the escape.

While the extent of the investigation is dependent on the circumstances, each investigation must at minimum include the following:

- The cause of the escape.
- Whether proper custody procedures were followed.
- What law enforcement authorities were notified, and when.
- What attempts were made to apprehend the alien; and
- Recommendations for corrective or disciplinary action, if applicable.

If the investigation determines that the escape was the result of improper procedures with the escorting officer or contract guard, or there is evidence of legal impropriety, the Office of Internal Audit must be notified and the report so noted.

The investigator assigned by the Field Office Director shall compile a written report that includes:

- Memoranda detailing the escape from each of the officers and/or agents involved.
- Memoranda detailing any reviews by the first or second line supervisors.
- The Field Office Director's summary/conclusion memorandum that:
 - Makes a determination whether proper procedures were observed and provides any recommendations for procedural changes.
 - Recommends whether disciplinary action or further investigation is warranted.

E. DRO Headquarters Review

Within 30 days of the escape, the Field Office Director shall transmit the completed written report to the Detention Management Division.

If any ongoing investigation precludes meeting the 30-day deadline, an **interim report** shall be forwarded with an appropriate explanation.

In the event of an escape of a **juvenile alien**, the National Juvenile Coordinator within the Detention Management division shall review all information relating to the investigation and make appropriate recommendations.

The Deputy Assistant Director for the Detention Management Division shall review the investigation reports and:

- Concur and close the escape, or
- Request further clarification and or action.

SUBJECT: Designation of Cold Case Fugitive Files and the Creation of a Fugitive Docket for the Fugitive Operations Support Center

Page 3

1. Ensure that the CCF file has a last known address older than 10 years and/or where there is no last known address; all investigative leads have been exhausted with no significant investigative leads or active developments for the last ten consecutive years, or no identity (biometric) documents (inclusive of fingerprints or photographic images) can be located for the fugitive case; all appropriate DHS and open source databases have been checked for possible matches of identity thereby exhausting all investigative leads; and the case is not designated as a fugitive alien in category 1,2, or 3;
2. Enter case information and investigative lead information into EARM case comments;
3. Enter into EARM case comments as the last entry that "all investigative leads have been exhausted and there are no further investigative leads at this time"; and,
4. a. If all required documents for NCIC entry are in the file, scan required A-file documents and email to the LESC for entry into the NCIC/NLETS lookout system;
b. If the cold case does not have the required documentation for NCIC entry, send the original A-file to the NRC; maintain an office copy of the fugitive work folder with the "Fugitive Alien Cold Case Checklist."

Once a case is determined to be a CCF case, the designated supervisor is responsible for assuring officers complete the Fugitive Alien Cold Case Checklist and assuring that the officers properly:

1. Determine when fugitive alien files become CCF files;
2. Initiate the appropriate case category designation (5Z, 8Z, 8Y,8X)
 - 5B Case Category, removal cases with biometric documents, will be changed to 5Z
 - 8E Case Category, excludable/inadmissible cases will be changed to 8Z
 - 8I Case Category, expedited removal cases, will be changed to 8Y
 - 5B Case Category, removal cases with no biometric documents will be changed to 5X
 - 8E/8I Case Category, excludable/inadmissible or expedited removal cases with no biometric documents will be changed to 8X;
3. Update the EARM DCO code to FOS to reflect the case has been transferred to the FOSC docket;
4. Create a copy of the supervisor approved Fugitive Alien Cold Case Checklist and Work Folder to be saved in an area accessible to the field office;
5. Transfer the physical file to NRC; and,
6. Update the Fugitive Case Management System (FCMS).

The designated supervisor must assure that the case officer completes all required actions as specified in the Fugitive Alien Cold Case Checklist. Each action item shall be initialed and dated by the case officer upon completion of each individual task. The designated supervisor shall review and sign-off on the Fugitive Alien Cold Case Checklist. The original Fugitive Alien Cold Case Checklist will be placed in the work folder with the Fugitive Operations Worksheet. The Fugitive Alien Cold Case Checklist shall *not* be placed in the A-file as it may

5. ATTACHMENTS

Escape Worksheet to be faxed to the Detention Management Division.

Department of Homeland Security
Immigration and Customs Enforcement
Enforcement and Removal Operations

Field Office
Fugitive Operations Team



LIMITED OFFICIAL USE

**FIELD OFFICE DIRECTOR (FOD) APPROVED
FUGITIVE OPERATIONS PLAN:**

1

Law Enforcement Sensitive-Official Use Only

Warning: This document is UNCLASSIFIED//FOR OFFICIAL USE ONLY (U//FOUO). It contains information that may be exempt from public release under the Freedom of Information Act (5 U.S.C. 552). It is to be controlled, stored, handled, transmitted, distributed, and disposed of in accordance with DHS policy relating to FOUO information and is not to be released to the public or other personnel who do not have a valid "need-to-know" without prior approval of an authorized DHS official. No portion of this report should be furnished to the media, either in written or verbal form.

Revised 12/21/2011
ICE.2014-FOIA-01578.003432

Department of Homeland Security
Immigration and Customs Enforcement
Enforcement and Removal Operations

ENFORCEMENT AND REMOVAL OPERATIONS
[REDACTED] FIELD OFFICE

I. Situation

The objective of Operation "[REDACTED]" is to apply an organized, methodical approach to the location and arrest of Immigration and Customs Enforcement (ICE) fugitive aliens, previously removed aliens, removable aliens convicted of crimes, and otherwise dangerous aliens at large within the [REDACTED] Field Office Area of Operational Responsibility (AOR) consistent with the ICE Immigration Enforcement Priorities.

The Field Office Director (FOD), Deputy Field Office Director (DFOD) and Assistant Field Office Director (AFOD) have been briefed on this operational plan, and support its execution.

A) Targeted Aliens – ([REDACTED])

[REDACTED] aliens have been identified and will be targeted during this operation. These targets have been reviewed and approved by FOD. The targets are comprised of aliens found within the three tier system of priorities for fugitive operations, which includes [REDACTED]. Of the total number of targets for this operation, [REDACTED] are tier 1 fugitive aliens, [REDACTED] are tier 2 previously removed aliens, and [REDACTED] are tier 3 removable aliens convicted of crimes. Enforcement actions may also be taken in this operation for other aliens encountered who are determined to be removable and found to present a public safety threat or otherwise meet ICE enforcement priorities, as provided in this operation plan. If safe, non-targeted aliens encountered during the operation should be checked for criminal and immigration histories while at the arrest location or taken to an ERO office and checked as quickly as possible. Based on the prosecutorial guidelines, appropriate charging and detention decisions should be made on a case by case basis. (See attached Excel spreadsheet for target list.)

B) Hours of Operation

2.

Law Enforcement Sensitive-Official Use Only

Warning: This document is UNCLASSIFIED//FOR OFFICIAL USE ONLY (U//FOUO). It contains information that may be exempt from public release under the Freedom of Information Act (5 U.S.C. 552). It is to be controlled, stored, handled, transmitted, distributed, and disposed of in accordance with DHS policy relating to FOUO information and is not to be released to the public or other personnel who do not have a valid "need to know" without prior approval of an authorized DHS official. No portion of this report should be furnished to the media, either in written or verbal form.

**Department of Homeland Security
Immigration and Customs Enforcement
Enforcement and Removal Operations**

Prior to the beginning of the operation, team members will be briefed on operational objectives and/or daily activities. Team members will conduct necessary pre-operational surveillance as resources permit. Operational hours will be from 0600 hrs to 2200 hrs each day. Although the operational hours for conducting arrests will be from 0600 hrs to 2200 hrs daily, the team leader(s) will determine the actual duty hours. No operation will begin prior to 0600 hrs or after 2200 hrs, unless the FOD has reviewed the case and given approval based on specific justification for each case (**see attachment**). All activities will be conducted pursuant to the National Fugitive Operations Program (NFOP) Policy and Procedures. Supervisory staff will change shift hours as needed in order to facilitate the operation. Operational hours will be between [REDACTED]. When a daily target list has been exhausted early in the day, consideration should be given to pursuing additional targets originally scheduled for later in the operation.

C) Local Situation

The [REDACTED] Fugitive Operations Team(s) will conduct the operation with support from other resources from the [REDACTED] Enforcement and Removal Operations (ERO) Office, as well as the following Law Enforcement Agencies (LEAs): [REDACTED]. The FOD has committed all necessary resources within their jurisdiction. (**See attached Excel spreadsheet for Team and LEA breakdown**)

D) Operational De-Confliction

Homeland Security Investigations (HSI) has been advised of the operation and has stated that they do not anticipate any conflict in the area and have [REDACTED] to participate. No additional request for assistance was made by ERO. The target list has been queried in TECS utilizing SQAD, SQ11, SQ16, and NN16 to ensure de-confliction with HSI and other law enforcement entities.

E) Local Law Enforcement Agencies (LEAs)

The Fugitive Operations Team (FOT) Supervisory Detention and Deportation Officer (SDDO) shall advise local LEAs prior to the execution of any Headquarters (HQ) approved or FOD approved fugitive operation plan. The standard operating procedure for local law enforcement agencies will vary from location to location and should be established through proactive liaison. During the course of the operation, if a target is found to be in an area outside the jurisdictions originally notified as part of the plan, every reasonable effort will be made to notify the newly affected LEA prior to the FOT's arrival. If this is impractical, then affected agencies should be notified as soon as possible

3.

Law Enforcement Sensitive-Official Use Only

Warning: This document is UNCLASSIFIED//FOR OFFICIAL USE ONLY (U//FOUO); it contains information that may be exempt from public release under the Freedom of Information Act (5 U.S.C. 552). It is to be controlled, stored, handled, transmitted, distributed, and disposed of in accordance with DHS policy relating to FOUO information and is not to be released to the public or other personnel who do not have a valid "need-to-know" without prior approval of an authorized DHS official. No portion of this report should be furnished to the media, either in written or verbal form.

**Department of Homeland Security
Immigration and Customs Enforcement
Enforcement and Removal Operations**

thereafter. In the presence of exigent circumstances, it may be prudent not to provide notification of impending fugitive operations within your jurisdiction. **(If this is the case, the FOD must be made aware of these circumstances and concur with written justification not to notify the local LEAs.)**

F) Sensitive Locations and 4th Amendment

Potential FOT activities near locations designated as sensitive as defined in the October 24, 2011, Enforcement Actions at or Focused on Sensitive Locations policy memorandum, will be avoided unless operationally necessary, and then only when in compliance with the memorandum. Pre-planned operations conducted near a sensitive area will be reviewed and approved in writing by the FOD or Headquarters according to the memorandum and outlined in this section of the operational plan. All personnel assigned to the operation will be briefed on the policy prior to the operation and that briefing documentation will be attached to the plan.

All personnel assigned to the operation must be current on 4th Amendment training requirements. In addition, FODs may choose to seek additional training by the Chief Counsel just prior to the operation, as is the case with national operations. **(List locations and targets here)**

G) Community Issues or Politically Sensitive Issues

Three days prior to the execution of the operation, the field office will provide the Office of Public Affairs (OPA) and Office of Congressional Relations (OCR) with the specifics of the operation, to include the operational dates and location of the initiative. If the operation can reasonably be expected to result in a negative community response, this must be specifically communicated to these offices and the Assistant Director for Field Operations.

H) Juveniles

The presence of juveniles at a target location, or in the care of a targeted alien, will be explored during initial investigation, surveillance and diligent research of available indices. In the event that minors are identified or likely to be encountered at a particular residence, family members, care providers and community, as well as state and county juvenile resources, will be identified and a plan of care for juveniles will be addressed prior to the commencement of operations. Juveniles will be turned over to county resources only as a last resort. Prosecutorial discretion will be applied as appropriate. Officers will limit contact with any identified juvenile to the extent officer safety is not compromised. In addition, the utmost care and consideration will be used when dealing with

Law Enforcement Sensitive-Official Use Only

Warning: This document is UNCLASSIFIED//FOR OFFICIAL USE ONLY (U//FOUO). It contains information that may be exempt from public release under the Freedom of Information Act (5 U.S.C. 552). It is to be controlled, stored, handled, transmitted, distributed, and disposed of in accordance with DHS policy relating to FOUO information and is not to be released to the public or other personnel who do not have a valid "need-to-know" without prior approval of an authorized DHS official. No portion of this report should be furnished to the media, either in written or verbal form.

**Department of Homeland Security
Immigration and Customs Enforcement
Enforcement and Removal Operations**

juveniles, especially when juveniles are present during interviews or encounters with adults. The questioning of juveniles will be kept to a minimum and conducted in the least threatening manner and environment possible. [REDACTED]

If unaccompanied alien juveniles are encountered, the local juvenile coordinator will be contacted for guidance. If they are unavailable, the Office of Refugee Resettlement (ORR) will need to be notified at 202-401-(b)(6) after all processing tasks are performed.

In the event that juvenile(s) are present, and their presence was not anticipated during operational enforcement activities, the FOT SDDO and team leaders may need to seek assistance from the state or local governmental agency responsible for juvenile issues, i.e. Child Protective Services (CPS). As such, the FOT SDDO and team leaders are in possession of the agency's appropriate contact numbers, to be used as deemed necessary throughout the entirety of the operation. [REDACTED]

Whenever possible, juveniles will be placed in the care of immediate family members that have no ascertainable criminal history. If there are no other options, sole care givers who are subject to removal, that have no ascertainable criminal record may be placed on an Order of Supervision or Order of Release on Recognizance with SDDO/AFOD approval.

I) Prosecutions

In instances where an alien is amenable to prosecution, the case will be presented to the United States Attorney's Office/State Attorney's Office as appropriate. If the case is accepted for prosecution, an I-247 Immigration Detainer will be filed with the agency assuming custody of the alien. If the United States Attorney's Office/State Attorney's Office declines to prosecute, the declination will be recorded in the narrative portion of the I-213 and included in the file.

J) Gangs

In the event that ICE personnel encounter an alien affiliated with a street gang, officers must record the appropriate information on form I-213 and photograph any tattoos. A copy of the I-213 and photos will be forwarded to the officer responsible for entering the subject's information into the ICE gang database. Additionally, in houses where gang tags are prevalent, photos will be taken, as well as a photo of the front of the house for future officer safety concerns.

5.

Law Enforcement Sensitive-Official Use Only

Warning: This document is UNCLASSIFIED//FOR OFFICIAL USE ONLY (U//FOUO). It contains information that may be exempt from public release under the Freedom of Information Act (5 U.S.C. 552). It is to be controlled, stored, handled, transmitted, distributed, and disposed of in accordance with DHS policy relating to FOUO information and is not to be released to the public or other personnel who do not have a valid "need-to-know" without prior approval of an authorized DHS official. No portion of this report should be furnished to the media, either in written or verbal form.

**Department of Homeland Security
Immigration and Customs Enforcement
Enforcement and Removal Operations**

ICE Definitions of Gang Member and Gang Associate

Gang Member: A gang member is defined as anyone who admits gang affiliation or falls under two or more of the following criteria, one of which occurred in the previous five years:

- Subject has tattoos identifying a specific gang.
- Subject frequents an area notorious for gangs and or associates with known gang members.
- Subject has been seen displaying gang hand signs/symbols.
- Subject has been identified as a gang member by a reliable source.
- Subject has been identified by an informant (tested or untested).
- Subject has been arrested on two or more occasions with known gang members (if the most recent arrest has occurred in the past five years, the "previous five years" requirement is deemed to have been met).
- Subject has been identified by a jail or prison as a gang member.
- Subject has been identified through seized written or electronic correspondence.
- Subject has been seen wearing gang apparel or been found possessing gang paraphernalia.
- Subject has been identified through documented reasonable suspicion.

Associate Gang Member: An associate gang member is defined as an individual who exhibits one of the above listed gang member criteria but not formally initiated into the gang. The officers/agents conducting the arrest will determine whether indications of association are present.

II. Mission

To identify, arrest, and remove aliens who present a danger to national security or are a risk to public safety, as well as those who enter the United States illegally or otherwise undermine the integrity of our immigration laws and our border control efforts. ERO upholds America's immigration laws at, within and beyond our borders through efficient enforcement and removal operations.

One of the most important ICE mandates is the enhancement of public safety and the security of the American public. The broad authority of ICE allows for the identification and removal of dangerous, often recidivist, criminals engaged in crimes such as murder, predatory sexual offenses, narcotics trafficking, alien smuggling, and a host of other crimes that have a profoundly negative impact on our society. The Fugitive Operations

Law Enforcement Sensitive-Official Use Only

Warning: This document is UNCLASSIFIED//FOR OFFICIAL USE ONLY (U//FOUO). It contains information that may be exempt from public release under the Freedom of Information Act (5 U.S.C. 552). It is to be controlled, stored, handled, transmitted, distributed, and disposed of in accordance with DHS policies relating to FOUO information and is not to be released to the public or other personnel who do not have a valid "need to know" without prior approval of an authorized DHS official. No portion of this report should be furnished to the media, either in written or verbal form.

**Department of Homeland Security
Immigration and Customs Enforcement
Enforcement and Removal Operations**

Division supports this mandate by performing strategic planning and establishing policy designed to augment ICE's ability to arrest and remove these aliens from the United States.

Operation "[REDACTED]" is an effort to apply an organized, methodical approach to the location and arrest of ICE fugitive cases previously removed aliens, removable aliens convicted of crimes, and otherwise dangerous aliens at large within the [REDACTED] Field Office(s) AOR. The sustained cooperation of other LEAs throughout the area is paramount in order to be successful in this initiative.

Definitions

- **Operation Return to Sender:** An enforcement initiative that applies an organized and methodical approach to the identification, location and arrest of ICE fugitive aliens.
- **Operation Secure Streets:** An enforcement operation that targets National Fugitive Operations tier priority aliens who have been convicted of violations concerning the operation of a motor vehicle while under the influence of alcohol or drugs.
- **Operation Cross Check:** A nationwide effort that serves as the operational umbrella for all other focused enforcement efforts conducted by Fugitive Operations Teams that target specific groups, such as aliens who have been convicted of specific crimes and remain at-large.
- **Operation SOAR:** A coordinated foreign-born sex offender enforcement operation that builds on ongoing efforts to target the worst criminal aliens and remove them from our communities.

III. Execution

A) Director's Intent

This operation is being conducted in furtherance of the national Immigration Enforcement Priorities and pursuant to the National Fugitive Operations Program Handbook. The objective of the NFOP is to reduce the backlog of ICE fugitives throughout the United States and to apprehend and remove previously removed aliens, removable aliens convicted of crimes, and otherwise dangerous aliens at large in the community.

Law Enforcement Sensitive-Official Use Only

Warning: This document is UNCLASSIFIED//FOR OFFICIAL USE ONLY (U//FOUO). It contains information that may be exempt from public release under the Freedom of Information Act (5 U.S.C. 552). It is to be controlled, stored, handled, transmitted, distributed, and disposed of in accordance with DHS policy relating to FOUO information and is not to be released to the public or other personnel who do not have a valid "need-to-know" without prior approval of an authorized DHS official. No portion of this report should be furnished to the media, either in written or verbal form.

**Department of Homeland Security
Immigration and Customs Enforcement
Enforcement and Removal Operations**

B) Concept of Operations

The operation will consist of [REDACTED] designated teams in the AOR. The teams will consist of members of the [REDACTED] FOTs; the teams will also be assisted by Deportation Officers (DOs) and Immigration Enforcement Agents (IEAs) from the Criminal Alien Program (CAP), detained and non-detained sections of [REDACTED] ERO. One DO will be assigned as the team leader for each team and one will be assigned as the File Control Officer (FCO). The teams will be assigned unmarked vehicles as well as secure transport vehicles for their use.

As arrest efforts progress, team resources may be reassigned to other geographical areas to meet operational needs or returned to their official duty posts as deemed appropriate by the SDDO/AFOD. A liaison will be established with local law enforcement offices in the areas that arrest efforts will be conducted.

This operation will consist of [REDACTED] of enforcement activity being executed throughout the [REDACTED] AOR from [REDACTED], through [REDACTED].

- [REDACTED]: Operational briefing at [REDACTED] hours at the [REDACTED]. All officers participating in the operation will attend the pre-operational briefing.
- [REDACTED] to [REDACTED]: Officers from the [REDACTED] FOTs will deploy throughout the [REDACTED] to initiate arrests at residences and places of employment.
- [REDACTED]: If advisable, the [REDACTED] ICE OPA will issue a press release following the completion of the operation once approved by the FOD.

C) Tasks ..

1. The NFOP and the Fugitive Operations Support Center (FOSC): A copy of the Operational Plan and target list has been sent to the FOSC and HQ NFOP via submission to the HQ ERO, FUGOPS Mailbox. Submissions must include the Operational Plan, Signed FOD Signature Page, Target List, and Personnel breakdown, along with any additional attachments as necessary.
2. The Law Enforcement Support Center (LESC) is available 24 hours a day, seven days a week and can provide support to Fugitive Operations Teams conducting operations. It is recommended that all officers/agents

**Department of Homeland Security
Immigration and Customs Enforcement
Enforcement and Removal Operations**

participating in the operation have the contact number for the LESC: 802-872[REDACTED]

3. Detention Operations Coordination Center (DOCC): Detention space is [REDACTED] within the [REDACTED] AOR, [REDACTED]

IV. Administration

A) Safety

Mandatory Element: **Safety is paramount.**

1. All participating officers will be fully equipped with both deadly and non-deadly force weapons, service-issued firearms and personal body armor.
2. Beyond identifying themselves verbally as law enforcement officers/agents, ERO enforcement personnel must utilize law enforcement identifiers, such as neck badges, belt badges, and outer garments affixed with ICE identifiers. In order to ensure uniformity, if utilized during enforcement operations, outer garments must be prominently affixed with both the words "ICE" and "Police."
3. Officers will not engage in high/low-speed vehicle pursuits.
4. No additional training will be necessary prior to this operation.

B) Logistics

1. Primary processing location: All detainees will be transported to [REDACTED] for processing.
 - a. Secondary detention and processing site(s) to be determined as needed.
 - b. The SDDO will coordinate requests for additional staff to support the enforcement operation. Requests will be made through the Operations AFOD with concurrence from the [REDACTED] FOD.

Law Enforcement Sensitive-Official Use Only

Warning: This document is UNCLASSIFIED//FOR OFFICIAL USE ONLY (U//FOUO). It contains information that may be exempt from public release under the Freedom of Information Act (5 U.S.C. 552). It is to be controlled, stored, handled, transmitted, distributed, and disposed of in accordance with DHS policy relating to FOUO information and is not to be released to the public or other personnel who do not have a valid "need-to-know" without prior approval of an authorized DHS official. No portion of this report should be furnished to the media, either in written or verbal form.

SUBJECT: Designation of Cold Case Fugitive Files and the Creation of a Fugitive Docket for
the Fugitive Operations Support Center
contain sensitive information.

Department of Homeland Security
Immigration and Customs Enforcement
Enforcement and Removal Operations

2. Lodging and per diem: [REDACTED] be required for the operation. In the event that the need arises to utilize lodging and per diem, it will be funded at the [REDACTED] level. **(If HQ NFOP funds are requested, submissions must include a written request for HQ NFOP funds, including the breakdown of cost estimates for all travel, lodging, and per diem, with any/all additional expenses detailed in writing.)**
3. Removal efforts: It is the intent of the FOD to expeditiously remove all ICE fugitive aliens and non-fugitive aliens from the United States. The below actions have been performed to facilitate this objective:
 - a. Once arrested, all detainees will be transported to the [REDACTED] for initial processing. All files will be reviewed by the Fug Ops team leader/SDDO for legal sufficiency prior to the alien being transferred to an appropriate detention facility.
 - No health & safety inspection required for any facility or equipment being utilized for this operation.
 - No contracts need to be reevaluated.
 - b. Each operational team has been instructed to secure any and all legally issued identity documents for all arrestees who will require a travel document for removal. All teams will make every legal effort to secure these documents prior to departing the arrest location. Obtaining these documents at the time of arrest will greatly decrease time spent in detention.
 - c. Any non-fugitive arrests that require a Notice to Appear will be presented with the option of a Stipulated Removal to aid in the reduction of detention time, if deemed appropriate by supervisory personnel. The [REDACTED] and [REDACTED] have been advised and contacted as to the availability to approve stipulated removals during the operation.
 - d. FOTs will not target non-tier aliens, though such aliens may be arrested as appropriate if encountered during operations, and circumstances dictate such action. In keeping with ERO's overarching mission of addressing public safety threats, including FAR cases, confirmed gang members and certain gang associates, such

Law Enforcement Sensitive-Official Use Only

Warning: This document is UNCLASSIFIED//FOR OFFICIAL USE ONLY (U//FOUO). It contains information that may be exempt from public release under the Freedom of Information Act (5 U.S.C. 552). It is to be controlled, stored, handled, transmitted, distributed, and disposed of in accordance with DHS policy relating to FOUO information and is not to be released to the public or other personnel who do not have a valid "need-to-know" without prior approval of an authorized DHS official. No portion of this report should be furnished to the media, either in written or verbal form.

**Department of Homeland Security
Immigration and Customs Enforcement
Enforcement and Removal Operations**

cases may be targeted with FOD concurrence even if they do not necessarily fall within one of the tier priorities.

- c. Prosecutorial discretion in immigration enforcement matters must be exercised consistent with all established guidelines and with supervisory oversight. This applies at all levels during the execution of the operation and could be applied during the pre-arrest, arrest, and custody phase. Communication within the local field office is imperative and nothing within this operation plan should be interpreted to supersede local management oversight and execution of prosecutorial discretion protocols.
 - f. When appropriate, a form of alternative detention can be utilized if authorized by supervisory personnel.
- [REDACTED]

C) General Reporting Requirements

1. Daily Reports: Submitted to the AFOD and HQ NFOP via the HQ FUGOPS mailbox utilizing the HQ approved Fugitive Operations Daily Report spreadsheet.

Via/Transmission: E-mail (HQERO, FUGOPS)

Due: 2400 daily

Period Covered: That day's 24-hour period (0001-2400 hours)

Quality Assurance: An officer, and support staff as needed, who are not involved with the operation will review target files against the daily report to ensure that the statistics reported are accurate. This review must be completed daily and at the conclusion of the operation. If asked to provide statistics prior to validation, the information must be clearly stated to be not validated and subject to change.

2. Weekly Reports: Standard HQ FUGOPS reporting via the Fugitive Case Management System (FCMS).
3. Significant Event Notification (SEN): A SEN/Significant Incident Report (SIR)/Significant Proposed Enforcement Activity Report (SPEAR) will only need to be submitted if events or incidences occur that warrant their generation in accordance with established policy and procedures.

Law Enforcement Sensitive-Official Use Only

Warning: This document is UNCLASSIFIED//FOR OFFICIAL USE ONLY (U//FOUO). It contains information that may be exempt from public release under the Freedom of Information Act (5 U.S.C. 552). It is to be controlled, stored, handled, transmitted, distributed, and disposed of in accordance with DHS policy relating to FOUO information and is not to be released to the public or other personnel who do not have a valid "need-to-know" without prior approval of an authorized DHS official. No portion of this report should be furnished to the media, either in written or verbal form.

**Department of Homeland Security
Immigration and Customs Enforcement
Enforcement and Removal Operations**

4. Report Format: At the conclusion of field operations, the team leaders will ensure that the FCMS is properly updated with all FOT arrests from the operation that are to be validated as FOT arrests in ENFORCE by close of business (COB) each day.
5. Director Notes: Director Notes should be submitted for events or incidents that warrant their generation in accordance with established policy and procedures.

D) After Action Reporting Requirements

1. Initial after action conferences will be conducted as follows:
 - a. Key operational personnel involved in the final phase(s) of the enforcement operation will be held on [REDACTED] at the [REDACTED].
2. Format: The format for issues will be:
 - a. Topic
 - b. Discussion
 - c. Recommendation(s)
3. Formal after action report: A memorandum of results will be generated and forwarded to the FOD for review as necessary.
4. [REDACTED] ICE OPA will coordinate with the FOD and generate a press release upon completion of the operation as necessary. [REDACTED]
[REDACTED]

V. Command and Control

1. Primary means of communication will be via radio, telephone and E-mail.

General

Emergencies: 911

Sector: 1-800-[REDACTED] (b)(6), (b)(7)(C)

ORR: 202-401-[REDACTED] (b)(6), (b)(7)(C)

LESC: 802-872-[REDACTED]

LESC POC:

FOSC POC:

Law Enforcement Sensitive-Official Use Only

~~Warning: This document is UNCLASSIFIED//FOR OFFICIAL USE ONLY (U//FOUO). It contains information that may be exempt from public release under the Freedom of Information Act (5 U.S.C. 552). It is to be controlled, stored, handled, transmitted, distributed, and disposed of in accordance with DHS policy relating to FOUO information and is not to be released to the public or other personnel who do not have a valid "need-to-know" without prior approval of an authorized DHS official. No portion of this report should be furnished to the media, either in written or verbal form.~~

Department of Homeland Security
Immigration and Customs Enforcement
Enforcement and Removal Operations

Local

AFOD:

SDDO:

Law Enforcement Sensitive-Official Use Only

Warning: This document is UNCLASSIFIED//FOR OFFICIAL USE ONLY (U//FOUO). It contains information that may be exempt from public release under the Freedom of Information Act (5 U.S.C. 552). It is to be controlled, stored, handled, transmitted, distributed, and disposed of in accordance with DHS policy relating to FOUO information and is not to be released to the public or other personnel who do not have a valid "need-to-know" without prior approval of an authorized DHS official. No portion of this report should be furnished to the media, either in written or verbal form.

Department of Homeland Security
Immigration and Customs Enforcement
Enforcement and Removal Operations

APPROVING OFFICIAL

Field Office Director
Field Office

ATTACHMENTS: (If applicable)

- Attachment 1: Complete Target List
- Attachment 2: Other than normal operational hours justification
- Attachment 3: Operational Support
- Attachment 4: Supporting Agency Contact Information
- Attachment 5: CPS Contact List
- Attachment 6: Cost Estimate for HQ requested funds

DISTRIBUTION:

HQ NFOP
FOSC
FOD
DFOD
Operations AFOD
DOCC

Law Enforcement Sensitive-Official Use Only

~~Warning: This document is UNCLASSIFIED//FOR OFFICIAL USE ONLY (U//FOUO). It contains information that may be exempt from public release under the Freedom of Information Act (5 U.S.C. 552). It is to be controlled, stored, handled, transmitted, distributed, and disposed of in accordance with DHS policy relating to FOUO information and is not to be released to the public or other personnel who do not have a valid "need-to-know" without prior approval of an authorized DHS official. No portion of this report should be furnished to the media, either in written or verbal form.~~

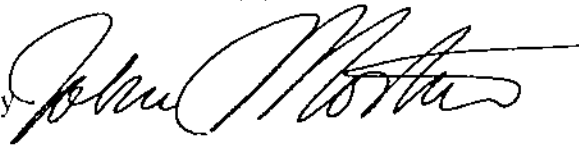
U.S. Department of Homeland Security
500 12th Street, SW
Washington, D.C. 20536



U.S. Immigration
and Customs
Enforcement

DEC 08 2009

MEMORANDUM FOR: Field Office Directors and
All Fugitive Operation Team Members

FROM: John Morton
Assistant Secretary 

SUBJECT: National Fugitive Operations Program: Priorities, Goals, and
Expectations

Purpose

This memorandum serves to clarify the enforcement priorities of the National Fugitive Operations Program (hereinafter the program) within the Office of Detention and Removal Operations (DRO) and supersedes previously issued fugitive operations guidance. The existence and continuation of this program are essential to the integrity of the immigration and border controls. Good government is poorly served if, after much time and the expenditure of government resources, final orders of removal are ignored without consequence. Indeed, the sound administration of the nation's immigration system depends on an efficient, fair, and meaningful removal process. As a result, it is the clear policy of this agency that final orders of removal should be enforced and that those who knowingly disobey or evade a final order of removal should be apprehended and removed.

In order to ensure that the program's resources are used efficiently and as envisioned by Congress, it is the policy of this agency that the program focus on its core mission—the apprehension and removal of fugitive aliens.¹ In the interest of public safety and the rule of law, the program's resources may also be used to apprehend and remove (1) aliens who have been removed previously from the United States and then return illegally, and (2) criminal or otherwise dangerous aliens living at large in our communities. As a general rule, the program's resources should not be used to target other classes of removable aliens, although fugitive operations teams may apprehend and remove such aliens if encountered during normal operations.

¹ A fugitive is any alien who has failed to leave the United States following the issuance of a final order of removal, deportation, or exclusion or has failed to report to ICE after receiving notice to do so.

Enforcement Priorities

The following three tiers reflect, in order of priority, how fugitive operations teams should focus their resources. Teams must focus the vast majority of resources, at least 70%, on tier 1 fugitives. The remainder should be directed to tiers 2 and 3. The priorities within each tier are also listed below, with level I generally warranting more attention than level II, and so forth. These tiers and levels provide clear guidance to the field but should not be applied so rigidly as to undermine sound judgment when exceptions are warranted by circumstance.² Similarly, the tiers should not be so rigidly interpreted to prevent prioritizing an illegal reentrant with a serious criminal conviction over a fugitive with no criminal history.

Tier 1 Fugitive aliens

- I. Fugitives who pose a threat to national security
- II. Fugitives convicted of violent crimes or who otherwise pose a threat to the community
- III. Fugitives with a criminal conviction other than a violent crime
- IV. Fugitives with no criminal conviction

Tier 2 Previously removed aliens

- I. Previously removed aliens who pose a threat to national security
- II. Previously removed aliens convicted of violent crimes or who otherwise pose a threat to the community
- III. Previously removed aliens with a criminal conviction other than a violent crime
- IV. Previously removed aliens with no criminal conviction

Tier 3 Removable aliens convicted of crimes

- I. Aliens convicted of level 1 offenses, as defined for purpose of Secure Communities
- II. Aliens convicted of level 2 offenses, as defined for purposes of Secure Communities
- III. Aliens convicted of level 3 offenses, as defined for purposes of Secure Communities

With respect to non-criminal fugitive targets in Tier 1, level IV, the Fugitive Operations Support Center (FOSC) and teams should consider that aliens who are the subject of in absentia orders and aliens with pending applications for relief before U.S. Citizenship and Immigration Services are more likely to have viable motions to reopen. For that reason, resources—particularly detention resources—may be better focused on other targets, unless aggravating circumstances offset the possibility of reopening or prolonged proceedings.

To promote efficiency, teams are expected to focus resources on cases with the most current investigative leads, including cases with the most recently issued final orders as these are most

² These guidelines and priorities are not intended to, do not, and may not be relied upon to create any right or benefit, substantive or procedural, enforceable at law by any party in any administrative, civil, or criminal matter.

likely to contain up-to-date contact information. These should be targeted as soon as possible to limit the opportunity for a fugitive to relocate. Teams are expected to act expeditiously if they receive current, time-sensitive leads.

As resources are best spent on cases with the freshest and most reliable leads, FOSC has created a cold case docket for those cases without any investigative leads in the past decade. FOSC will review the cold case docket twice a year to determine if new information has surfaced. New information may cause FOSC to conclude the case is resolved (for instance, because the case was reopened) or return it to the active fugitive docket (for instance, because of new information about the alien's location).

Teams will receive Fourth Amendment training every six months which will focus on the special considerations when apprehending fugitives at their home. Any team member with questions should consult his or her supervisors and consult with the Office of Chief Counsel. Team members are encouraged to engage in surveillance both to promote officer safety and increase the likelihood the team will encounter the targeted alien—rather than aliens who are not in the tiers above and would not otherwise have been the focus of limited government resources.

If during the course of operations teams encounter removable aliens, teams may place those aliens into removal proceedings, even if they are not in one of the three tiers. However, this should not detract attention away from the reason Congress mandated and funded fugitive operation teams—the apprehension and removal of fugitive aliens. In any event, detention resources shall be focused on aliens in the three tiers above and aliens subject to mandatory detention by law. Absent extraordinary circumstances, team members should not detain aliens who are physically or mentally ill, disabled, elderly, pregnant, nursing, or the sole caretaker(s) of children or the infirm. To detain aliens in those categories, team members must secure approval from the Field Office Director and send a significant event notice (SEN) to headquarters.

Measuring Success

As apprehending and removing fugitives is the program's core mission, field offices' performance will be measured in part by the reduction in the fugitive docket and by compliance with priorities. Each field office and the FOSC should strive to reduce the pool of fugitives by 5% more in FY 2010 than it did in FY 2009. A field office may increase productivity—the reduction in the fugitive pool—by apprehending fugitives or otherwise resolving fugitive cases, even if no arrest is involved. This includes resolving cases by determining that a target has departed the country on his or her own or determining that the case was reopened or the target has since received an immigration benefit. Field offices should not feel such pressure to meet this goal that they lose focus on the priorities and sound use of resources. This goal does not constitute a quota; rather, this goal allows the teams to gage their productivity.

The field should not focus on numbers to the detriment of targeting and arresting the most egregious, violent offenders in their area of responsibility (AOR). To acknowledge the tiered prioritization above, DRO also will track fugitive arrests, by tier, using EARM (b)(7)(E). Arrests will be separated by tiers, criminal and non-criminal arrests, and indictments and

convictions attributed to teams during operations. This system will credit teams for locating high priority aliens, even if those cases require more time to investigate and close.

Field offices are expected to focus not simply on the apprehension of aliens, but also on their removal. Headquarters will evaluate removals in addition to the metrics above. When fugitives are taken into custody, officers should pay attention to lawful avenues to secure the person's travel documents to reduce detention times and facilitate removal.

Field and National Operations

Field offices have the discretion to conduct operations to advance the program's priorities and accomplish the goal of reducing the fugitive pool. Field offices are encouraged to participate in Operation Cross Check and Operation Secure Streets in collaboration with local United States Attorney's offices. These operations are important as they identify criminal aliens who fall within the three tiers above. Field offices also will be called on to participate in national and strategic headquarters-driven operations. Major operations, whether driven by the field or headquarters, will be coordinated with the Office of the Principal Legal Advisor.

Building Partnerships

Field Office Directors and team members are encouraged to maintain and build positive relationships with federal, state, local, and tribal law enforcement agencies in their AOR. This includes information sharing, consistent with law and policy. Team members are encouraged to advise, and cooperate with, local law enforcement partners when conducting operations. Field Office Directors will coordinate with any local participants in the task force model of the 287(g) program to share information and avoid duplication of efforts.

Field Office Directors also are expected to build relationships with community groups to identify and address concerns about the conduct of fugitive operations. Allegations of misconduct and wrongdoing are referable to the Joint Intake Center (JIC).

SUBJECT: Designation of Cold Case Fugitive Files and the Creation of a Fugitive Docket for the Fugitive Operations Support Center

Page 4

FOSC Responsibilities

Each quarter, FOSC will conduct quality assurance reviews. A random sampling of a minimum of three percent of all new CCF files on FOSC's docket will be manually reviewed by FOSC officers to ensure the accuracy of CCF designations made by the field offices. The results of the review will be provided to the Deputy Assistant Director for the Compliance Enforcement Division.

In addition, on a semi-annual basis, FOSC will electronically review all CCF files on its docket and refer any current leads to the respective field office via FCMS. Any CCF file with new leads will be designated as an active case and will be reassigned to its appropriate case category and docket control office.

Field Investigative Leads that Develop after a Cold Case Designation

Upon receipt of a new investigative lead obtained by the field, the designated supervisor will initiate the following actions:

1. Contact the FOSC to obtain the A-file and assign the case to the appropriate officer. If the lead is outside the supervisor's jurisdiction, forward the new investigative lead information to the FOSC and send a copy of the Work Folder to the appropriate jurisdiction or field office; and,
2. Update case comments in EARM.

For further inquiries, please contact the FOSC Unit Chief (b)(6),(b)(7)(C) at (802) 657-(b)(6)

Attachment:

Fugitive Alien Cold Case Check List

Fugitive Alien Cold Case Checklist

1. (b)(7)(E) _____
2. Lexis/Nexis or other commercial database _____
3. Social Security _____
4. Department of Motor Vehicle _____
5. DHS database systems - _____
6. U.S. Postal Service _____
7. Employment - _____
8. Surveillance - _____
9. Other appropriate checks - _____
10. EARM updated _____
11. Appropriate Cold Case Designation - _____
12. Original A-file sent to NRC _____
13. Work folder with this form saved in designated area _____
14. Update FCMS _____

Case Agent

Date:

Supervisor

Date:



U.S. Immigration
and Customs
Enforcement

OCT 24 2011

MEMORANDUM FOR: Field Office Directors
Special Agents in Charge
Chief Counsel

FROM: John Morton 
Director

SUBJECT: Enforcement Actions at or Focused on Sensitive Locations

Purpose

This memorandum sets forth Immigration and Customs Enforcement (ICE) policy regarding certain enforcement actions by ICE officers and agents at or focused on sensitive locations. This policy is designed to ensure that these enforcement actions do not occur at nor are focused on sensitive locations such as schools and churches unless (a) exigent circumstances exist, (b) other law enforcement actions have led officers to a sensitive location as described in the *"Exceptions to the General Rule"* section of this policy memorandum, or (c) prior approval is obtained. This policy supersedes all prior agency policy on this subject.¹

Definitions

The enforcement actions covered by this policy are (1) arrests; (2) interviews; (3) searches; and (4) for purposes of immigration enforcement only, surveillance. Actions not covered by this policy include actions such as obtaining records, documents and similar materials from officials or employees, providing notice to officials or employees, serving subpoenas, engaging in Student and Exchange Visitor Program (SEVP) compliance and certification visits, or participating in official functions or community meetings.

The sensitive locations covered by this policy include, but are not limited to, the following:

¹ Memorandum from Julie L. Myers, Assistant Secretary, U.S. Immigration and Customs Enforcement, "Field Guidance on Enforcement Actions or Investigative Activities At or Near Sensitive Community Locations" 10029.1 (July 3, 2008); Memorandum from Marey M. Forman, Director, Office of Investigations, "Enforcement Actions at Schools" (December 26, 2007); Memorandum from James A. Puleo, Immigration and Naturalization Service (INS) Acting Associate Commissioner, "Enforcement Activities at Schools, Places of Worship, or at funerals or other religious ceremonies" HQ 807-P (May 17, 1993). This policy does not supersede the requirements regarding arrests at sensitive locations put forth in the Violence Against Women Act, see Memorandum from John P. Torres, Director, Office of Detention and Removal Operations and Marey M. Forman, Director, Office of Investigations, "Interim Guidance Relating to Officer Procedure Following Enactment of VAWA 2005 (January 22, 2007).

- schools (including pre-schools, primary schools, secondary schools, post-secondary schools up to and including colleges and universities, and other institutions of learning such as vocational or trade schools);
- hospitals;
- churches, synagogues, mosques or other institutions of worship, such as buildings rented for the purpose of religious services;
- the site of a funeral, wedding, or other public religious ceremony; and
- a site during the occurrence of a public demonstration, such as a march, rally or parade.

This is not an exclusive list, and ICE officers and agents shall consult with their supervisors if the location of a planned enforcement operation could reasonably be viewed as being at or near a sensitive location. Supervisors should take extra care when assessing whether a planned enforcement action could reasonably be viewed as causing significant disruption to the normal operations of the sensitive location. ICE employees should also exercise caution. For example, particular care should be exercised with any organization assisting children, pregnant women, victims of crime or abuse, or individuals with significant mental or physical disabilities.

Agency Policy

General Rule

Any planned enforcement action at or focused on a sensitive location covered by this policy must have prior approval of one of the following officials: the Assistant Director of Operations, Homeland Security Investigations (HSI); the Executive Associate Director (EAD) of HSI; the Assistant Director for Field Operations, Enforcement and Removal Operations (ERO); or the EAD of ERO. This includes planned enforcement actions at or focused on a sensitive location which is part of a joint case led by another law enforcement agency. ICE will give special consideration to requests for enforcement actions at or near sensitive locations if the only known address of a target is at or near a sensitive location (e.g., a target's only known address is next to a church or across the street from a school).

Exceptions to the General Rule

This policy is meant to ensure that ICE officers and agents exercise sound judgment when enforcing federal law at or focused on sensitive locations and make substantial efforts to avoid unnecessarily alarming local communities. The policy is not intended to categorically prohibit lawful enforcement operations when there is an immediate need for enforcement action as outlined below. ICE officers and agents may carry out an enforcement action covered by this policy without prior approval from headquarters when one of the following exigent circumstances exists:

- the enforcement action involves a national security or terrorism matter;
- there is an imminent risk of death, violence, or physical harm to any person or property;

ICE/DRO DETENTION STANDARD

FUNDS AND PERSONAL PROPERTY

I. PURPOSE AND SCOPE. This Detention Standard ensures that detainees' personal property, including funds, valuables, baggage and other personal property, is safeguarded and controlled, and that contraband does not enter a detention facility.

This Detention Standard applies to the following types of facilities housing ICE/DRO detainees:

- Service Processing Centers (SPCs);
- Contract Detention Facilities (CDFs); and
- State or local government facilities used by DRO through Intergovernmental Service Agreements (IGSAs) to hold detainees for more than 72 hours.

Procedures in italics are specifically required for SPCs and CDFs. IGSAs must conform to these procedures or adopt, adapt or establish alternatives, provided they meet or exceed the intent represented by these procedures.

Some terms used in this document may be defined in the separate **Definitions** Standard.

II. EXPECTED OUTCOMES. The expected outcomes of this Detention Standard are:

1. The security, safety and good order of each facility will be maintained through an immediate search of each newly admitted detainee's property.
2. Each detainee's funds, valuables, baggage, and personal property will be inventoried, receipted, stored and safeguarded for the duration of their detention.
3. Each detainee will be informed about what funds and property may be retained in his or her possession and about procedures to report missing or damaged property.
4. The applicable content and procedures in this Standard will be communicated to the detainee in a language or manner which the detainee can understand.

III. DIRECTIVES AFFECTED. This Detention Standard replaces **Funds and Personal Property** dated 9/20/2000.

IV. REFERENCES

American Correctional Association 4th Edition, Standards for Adult Detention Facilities: 4-ALDF-2A-20, 2A-23, 2A-24, 6A-07(M).

ICE/DRO Detention Standard on **Contraband**.

V. EXPECTED PRACTICES

A. General

All detention facilities are required to have written policies and procedures to:

- Account for and safeguard detainee property from time of admission until date of release;
- Inventory and receipt detainee funds and valuables;
- Inventory and receipt detainee baggage and personal property (other than funds and valuables);
- Inventory and audit detainee funds, valuables, and personal property;
- Return funds, valuables, and personal property to detainees being transferred or released; and
- Provide a way for a detainee to report missing or damaged property.

In many facilities, detainee funds are deposited in the detainee's commissary or canteen account. Any facility without a commissary shall provide:

- A cash box for currently held detainee funds that can be accessed only by designated supervisor(s);
- Valuable-property envelopes, which can be accessed only by designated supervisor(s);
- A dedicated safe for the cash box and property envelopes.

All facilities, at a minimum shall provide:

- A secured locker for holding large valuables, that can be accessed only by designated supervisor(s); and
- A baggage and property storage area that is secured when not attended by assigned admissions processing staff.

Both the safe and the large-valuables locker should be kept in either the shift supervisor's office or otherwise secured in an area accessible only by the shift supervisor.

The baggage and property storage area shall be maintained in a clean and orderly manner and inspected as often as necessary to protect detainee property.

B. Contraband

In accordance with the Detention Standard on **Contraband**, any unauthorized personal property is contraband that must be surrendered to staff for securing, receipting and inventorying.

C. Notice to Detainees

The detainee handbook or equivalent shall notify the detainees of facility policies and procedures concerning personal property, including:

- Which items (and cash) they may retain in their possession;

- That, upon request, they shall be provided a ICE/DRO-certified copy of any identity document (passport, birth certificate, etc.) placed in their A-files;
- The rules for storing or mailing property not allowed in their possession;
- The procedure for claiming property upon release, transfer, or removal;
- The procedures for filing a claim for lost or damaged property;
- Access to detainee personal funds to pay for legal services.

D. Admission

Staff shall search all arriving detainees' personal property for contraband.

Staff shall search and inventory detainee property only in the presence of the detainee(s), unless instructed otherwise by the facility administrator.

Medical staff shall determine the disposition of all medicine accompanying an arriving detainee.

Standard operating procedure shall include obtaining a forwarding address from every detainee for use in the event that personal property is lost or forgotten in the facility after the detainee's release, transfer, or removal.

E. Limitations on Possession of Funds and Personal Property

1. The facility administrator shall establish whether and, if so, how much cash each detainee may keep in his or her personal possession while in detention.
2. Detainees may keep a reasonable amount of personal property in their possession, provided it poses no threat to detainee safety or facility security. Detainees shall have the opportunity to store excess property with a third party or, with the facility administrator's permission, in the facility's personal property storage area.
3. Identity documents, such as passports, birth certificates, are held in each detainee's A-file but, upon request, staff shall provide the detainee a copy of a document, certified by an ICE/DRO official to be a true and correct copy.
4. For each housing area, the facility administrator shall designate a storage area for storing detainee personal property.

In SPCs and CDFs, each detainee shall be permitted to keep in his or her possession reasonable quantities of the following, as long as a particular item does not pose a threat to the security or good order of the facility:

- *Small religious items including religious jewelry items;*
- *Religious and secular reading material (softbound), and correspondence;*
- *Legal documents and papers, including property receipts;*
- *Up to ten photographs measuring 5" x 7" or smaller;*
- *Prescription glasses;*
- *Dentures;*

- *Personal address book or pages;*
- *Wedding ring;*
- *Other items approved by the facility administrator or chief security officer.*

Examples of items detainees may not retain include:

- *Cash in excess of the established facility limit;*
- *Any negotiable instrument;*
- *Jewelry other than small religious items and wedding rings;*
- *Other items of value, for example, cameras, radios, stereos;*
- *Personal clothing and hygiene items when the facility provides them;*
- *Prohibited publications, including (but not limited to) publications depicting activities that present a substantial risk of physical violence or group disruption (such as material dealing with self-defense or survival, weaponry, armaments, explosives, or incendiary devices); containing sexually explicit material; or describing the production of drugs, alcohol, or weapons.*
- *Drugs and medications not prescribed or authorized by facility medical staff.*

Every housing area shall have lockers or other securable space for storing detainees' authorized personal property. The amount of storage space shall correspond to the number of detainees assigned to that housing area.

Space constraints may cause the facility administrator to limit the number of newspapers, magazines, etc., allowed to each detainee.

F. Excess Property

To prevent overcrowding and related storage problems, staff shall encourage detainees to send extra suitcases, televisions, and other "soft" (not illegal or dangerous) contraband to a third party of his or her choosing.

- The facility may make shipping arrangements for a detainees requiring such help and shall assume the cost if the detainee cannot afford postage.
- If a detainee does not provide an appropriate mailing address within 30 days, the facility may make reasonable accommodations to store the property until the detainee's removal or release. Ordinarily the amount stored may not exceed 40 lbs.
- If a detainee does not provide an appropriate mailing address or is unable to pay the postage, the facility administrator may dispose of the property in accordance with the Detention Standard on **Contraband**, after providing the detainee with written notice.
- When personal property is shipped, staff shall prepare an inventory record and maintain a copy in the detainee's detention file.

- the enforcement action involves the immediate arrest or pursuit of a dangerous felon, terrorist suspect, or any other individual(s) that present an imminent danger to public safety; or
- there is an imminent risk of destruction of evidence material to an ongoing criminal case.

When proceeding with an enforcement action under these extraordinary circumstances, officers and agents must conduct themselves as discretely as possible, consistent with officer and public safety, and make every effort to limit the time at or focused on the sensitive location.

If, in the course of a planned or unplanned enforcement action that is not initiated at or focused on a sensitive location, ICE officers or agents are subsequently led to or near a sensitive location, barring an exigent need for an enforcement action, as provided above, such officers or agents must conduct themselves in a discrete manner, maintain surveillance if no threat to officer safety exists and immediately consult their supervisor prior to taking other enforcement action(s).

Dissemination

Each Field Office Director, Special Agent in Charge, and Chief Counsel shall ensure that the employees under his or her supervision receive a copy of this policy and adhere to its provisions.

Training

Each Field Office Director, Special Agent in Charge, and Chief Counsel shall ensure that the employees under his or her supervision are trained (both online and in-person/classroom) annually on enforcement actions at or focused on sensitive locations.

No Private Right of Action

Nothing in this memorandum is intended to and may not be relied upon to create any right or benefit, substantive or procedural, enforceable at law by any party in any administrative, civil, or criminal matter.

This memorandum provides management guidance to ICE officers exercising discretionary law enforcement functions, and does not affect the statutory authority of ICE officers and agents, nor is it intended to condone violations of federal law at sensitive locations.

G. Officer Processing of Funds and Valuables

SPCs and CDFs lacking automated detainee funds systems must process detainee funds and valuables as follows:

1. Funds

For recordkeeping and accounting purposes, use of the G-589 Property Receipt form is mandatory to inventory any funds removed from a detainee's possession, and a separate form G-589 is required for each kind of currency and negotiable instrument.

The removal and inventory shall be conducted in the detainee's presence, and at least two officers must be present to remove funds from a detainee's possession and to inventory the property on the G-589. The G-589 shall include:

- *The detainee's A-number or facility detainee number in the center area, just above the biographic information;*
- *The three-letter facility designation;*
- *The current date;*
- *The complete name of the detainee, printed legibly;*
- *In the "Quantity" column, the number of checks, money orders, or other negotiable instruments;*
- *In the "Description" column:*
 - *The amount and type of currency; the kind of check, money order, or other negotiable instrument;*
 - *The name of the issuing bank, the register or check number, and the account name.*
 - *For U.S. currency, the dollar sign (\$) followed by the dollar amount, for example. \$100.*
 - *For foreign currency, the currency amount followed by the type, for example, 140 Japanese Yen, 300 German Marks, 4,000 Mexican Pesos.*

For a detainee with more than one kind of negotiable instrument, the officers shall prepare as many G-589s as necessary to list separately all checks; all money orders; each additional category of negotiable instrument; and each type and amount of foreign currency.

If cash is returned to the detainee for possession inside the facility, staff shall record the transaction in the "Description" column of the affected G-589.

After all required information is recorded on the G-589, the carbon paper between the white original copy and the blue duplicate copy shall be removed.

The two officers and the detainee shall sign all copies after which the copies shall be distributed as follows:

- *White original to the detainee (property receipt);*
- *Blue copy to detainee's I-385 booking card or detention file (attachment);*

- *Pink copy to funds envelope (insert).*

The admissions processing officer shall record each G-589 issued and enter the initials and star numbers of receipting officers in the facility's **G-589 Property Receipt Logbook**. The officer shall then deposit an envelope containing the currency, checks, money orders, other negotiable items, and G-589 receipt(s) in the drop safe.

2. Small valuables, including jewelry

The G-589 shall describe each item of value. Jewelry shall be described in general terms (for example, ring – yellow/white metal with red/white stone), with no mention of brand name or monetary value. The detainee and two processing officers shall sign the G-589, with copies distributed as above. The officers shall then place the valuables (and pink copy of G-589) in a clear envelope, which they shall secure by heat-sealing or other approved techniques for tamper-proofing.

The processing officer shall record the issuance of this G-589 in the **G-589 Property Receipt Logbook**. The officer shall then deposit the heat-sealed valuables envelope and G-589 receipts shall be deposited in the drop safe provided. Zippered nylon bags are not authorized.

3. Large valuables

Large valuable are items that do not fit into property envelopes, for example, televisions or musical instruments. The G-589, including a description of each item, shall be prepared and distributed as above. The large valuables shall then be tagged with a copy of the G-589 and a Baggage Check (Form I-77). The officers shall attach a copy of the G-589 and the center portion of the I-77 to the detainee's booking card or detention file. The processing officer shall record the G-589 issuance in the facility's **G-589 Property Receipt Logbook** and secure the item(s) in the designated storage area.

H. Supervisor Processing of Funds and Valuables

The supervisory security officer or equivalent shall remove the contents of the drop safe during his or her shift and initial the G-589 accountability log. The supervisor shall:

1. *Verify the correctness of all G-589s;*
2. *Record the amount of cash and describe each item in the supervisors' property log; and*
3. *Verify the proper disposition of funds and valuables by checking the sealed envelopes in the cash box, the property envelopes in the safe, and the safekeeping of all large valuables in the designated secured locked area.*

I. Officer Processing of Baggage and Personal Property Other Than Funds and Valuables

In SPCs and CDFs, the following procedures apply:

An itemized inventory of all detainee baggage and personal property (separate from funds and valuables) shall be completed during admissions processing using the personal property inventory form. Each facility should inventory all property even if the property was previously inventoried by another facility and is contained in a sealed bag. If a detainee has no baggage, a facility container shall be provided to store his or her personal property.

These procedures do not apply to identity documents, such as passports, birth certificates, which are held in each detainee's A-file.

The personal property inventory form must contain the following information at a minimum:

- *Date and time of admission;*
- *Detainee's complete name and A-number or facility detainee number;*
- *Description, quantity and disposition of articles. Disposition may be indicated as either:*
 - *"S" for "Safekeeping" (by the facility), or*
 - *"R" for "Retained" (by the detainee);*
- *General condition of the property; and*
- *Signatures of the officer completing the inventory and the detainee.*

After being properly inventoried and inspected for contraband, all baggage and facility containers shall be tagged as follows:

- *A pre-numbered, three-part I-77 shall be issued for each separate item of baggage or container. The front side of the I-77 has three parts: top (Part I), center (Part II), and bottom (Part III), the reverse side of which provides additional space to describe and identify the baggage or container.*
- *Each I-77 shall bear the detainee's full name and A-number/facility detainee number, and the date.*
- *The detainee's signature must appear on both the top (Part I) and bottom (Part III) of the I-77.*
- *The top part of the I-77 shall be attached to the detainee's property.*
- *The center part shall provide a brief description of the property container (for example, black suitcase, paper bag, etc.) and shall be attached to the detainee's booking card or detention file.*
- *The bottom part shall be given to the detainee, and the reverse side shall also contain a brief description of the property container.*

All detainee luggage and facility containers used for storing detainee personal property shall be secured in a manner that is tamper-resistant (such as by a tamperproof numbered tie strap) and shall only be opened in the presence of the

detainee.

A logbook shall be maintained listing detainee name, A-number or facility detainee number, I-77 number, security tie-strap number, property description, date issued and date returned.

Tagged baggage and other property tagged only with an I-77 shall then be stored in the facility baggage storage area.

J. Inventory and Audit

Where physical custody of, or access to, detainee funds, property envelopes, and large valuables changes with facility shift changes, both on-coming and off-going supervisors shall simultaneously conduct an audit of these items. The property and valuables logbook shall record the date, time, and the name of the officer(s) conducting the inventory. Any discrepancies shall be immediately reported to the chief of security, who shall follow facility procedure to ensure that all detainee funds and valuables are accounted for.

For each audit, SPCs shall use Form G-786/Alien Funds Audit Sheet, and CDFs shall use an audit sheet reflecting, at a minimum, the following information:

1. **Funds Held by Officers Other than the On-Duty Supervisor.** At no time shall funds be held by officers other than the on-duty supervisor.
2. **Cash on Hand.** The count is to be made by the incoming processing supervisor who shall fill in the appropriate blanks with the amount of each denomination (U.S. currency).
3. **Checks, Money Orders or Other Negotiable Items.** The count is to be made by the in-processing supervisor and the appropriate blanks filled in reflecting the amount of checks, money orders and other negotiable items.
4. **Total of G-589 Property Receipts.** This is the total amount of funds, checks, money orders and other negotiable items as reflected by the copies of the G-589s (or equivalent forms) in the cash box.
5. **Disbursed During Shift.** The total amount of funds disbursed during the shift. The out-going processing supervisor shall enter disbursement information.
6. **Received During Shift.** The total amount of funds collected during the shift. The out-going processing supervisor shall complete this information.
7. **Cash on Hand at End of Shift.** The amount on hand as counted by the out-going processing supervisor. (If this doesn't match with the cash on a new audit shall be conducted.) The chief of security or equivalent shall follow facility procedures to ensure that all detainee funds and valuables are accounted for.
8. **Number of sealed property bags.** In SPCs and CDFs without commissaries, a comprehensive weekly audit is to be completed jointly by the Detention Operations Supervisor or CDF equivalent and a detention staff member. The audit shall be logged in the property and valuables logbook. Discrepancies shall be reported to the chief of security or equivalent. The chief of security or equivalent shall take the necessary steps, according to

facility policy, to ensure that all detainee funds and valuables are accounted for.

An inventory of detainee baggage and other non-valuable property shall be conducted by the facility administrator's designee at least once each quarter.

The facility's daily log shall indicate the date, time and name of the officer(s) conducting the inventory. Any discrepancies shall be reported immediately to the facility administrator.

K. Release or Transfer

After checking the I-385 card, wristbands, and property receipts to positively identify the detainee being released or transferred, the detainee shall present the white copy of the G-589(s) and I-77(s) for all receipted property.

For each I-77 presented, staff shall compare the signature on the detainee's portion with the portion on the stored item and the portion on the booking card. Depending on the size and kind of funds and valuables listed on the G-589, staff shall conduct checks as follows:

1. **Small Valuables.** Match the contents of the property envelope against the itemized list on all three copies of the G-589.
2. **Large Valuables.** Match the tagged against with the description on all three copies of the G-589.
2. **Negotiable Instruments.** Match the negotiable instruments against the description on all three copies of the G-589.
4. **Cash Funds.** Compare the property description(s) on the white, pink, and blue copies of the G-589.

After the property check, the property shall be returned to the detainee. The detainee shall then sign the blue copy of the G-589, indicating his or her receipt of all funds and personal property due him/her. The property log and inventory sheets shall reflect the transaction.

L. Lost or Damaged Property

1. General

In SPCs and CDFs, supervisory personnel shall be notified when properly receipted detainee property is reported missing or damaged. Supervisory staff shall investigate and, if necessary, take prompt action to prevent further loss.

If the property is not recovered or is recovered but in damaged condition, staff shall prepare a report for the facility administrator, providing:

1. Name and A-number/facility detainee number of the detainee claiming ownership;
2. Description of the property and, if applicable, damage;
3. Date and time the loss or damage was discovered;
4. Name(s) of person(s) discovering the loss or damage;

5. *The circumstances under which the person(s) discovered the loss or damage;*
6. *Names and statements of all witnesses;*
7. *Place, date, and time the property was last seen (before reported missing or damaged);*
8. *The circumstances under which the property was last seen (before reported missing or damaged); and*
9. *Sworn statements from the detainee and all witnesses.*

A detainee being transferred, released, or removed from the country with a property claim shall be allowed to initiate the claim before leaving the facility. The facility administrator shall forward the result of the claim to the claimant's forwarding address (provided upon admission or in conjunction with the claim).

2. Lost or Damaged Property in SPCs

In addition to all procedures specified above, SPC staff must complete Form I-387, "Report of Detainees Missing Property" for missing property (not damaged property). The original copy of this form shall be placed in the detainee's A-file, with a copy retained by the facility.

The facility administrator shall report allegations of impropriety against staff in the handling of detainee funds or valuables in accordance with the Administrative Manual.

3. Lost and Damaged Property in CDFs and IGSAs

All CDFs and IGSA facilities shall have and follow a policy for loss of or damage to properly receipted detainee property, as follows:

- All procedures for investigating and reporting property loss or damage shall be implemented as specified in this Standard;
- Supervisory staff shall conduct the investigation;
- The senior facility contract officer shall process all detainee claims for lost or damaged property promptly;
- The official deciding the claim shall be at least one level higher in the chain of command than the official investigating the claim;
- The facility shall promptly reimburse detainees for all validated property losses caused by facility negligence;
- The facility may not arbitrarily impose a ceiling on the amount to be reimbursed for a validated claim; and
- The senior contract officer shall immediately notify the designated ICE/DRO officer of all claims and outcomes.

M. Abandoned Property

All CDFs and IGSA facilities shall report and turn over to ICE/DRO all detainee abandoned property.

ICE/DRO shall handle abandoned property in accordance with ICE/DRO Detention and Removal Operations Policy and Procedures Manual on Detainee Property Management (Chapter 30):

1. Notification, including DRO staff contact and telephone number, shall be sent by certified mail to the last known address of the detainee, advising him or her that the property has been declared abandoned and that he or she has 30 days in which to contact ICE/DRO to arrange to claim the property. Notification shall state that failure to respond within 30 days will be considered abandonment of property.
2. If the detainee does not respond or expresses no interest in claiming the property, the facility administrator shall have the property "vested" into the ownership of the government.
3. After the property has been vested, ICE/DRO shall:
 - Use the property,
 - Destroy the property, or
 - Sell the property at auction and deposit the proceeds into a general account.
4. Contraband shall be handled in accordance with the Detention Standard on **Contraband**.
5. Property that is of minimal value, broken, or clearly abandoned shall be discarded.
6. Because property obtained through non-appropriated funds cannot be donated, donations of abandoned property to charitable organizations are prohibited.

Standard Approved:

James T. Hayes, Jr. /s/

12/5/2008

James T. Hayes, Jr
Director
Office of Detention and Removal Operations

Date



U.S. Immigration
and Customs
Enforcement

MAY 20 2005

MEMORANDUM FOR:

(b)(6),(b)(7)(C)

FROM:

Acting Director

SUBJECT:

Addition of Chapter 19, Section 18, International Police
Organization (INTERPOL) of the Detention and Deportation
Officer's Field Manual (DDFM)

The DDFM is updated to reflect the addition of Section 18, Chapter 19. Accordingly, the DDFM is updated as follows:

19.18 International Criminal Police Organization (INTERPOL)

I. Background

Headquarters, DRO has previously issued memoranda on the preparation of INTERPOL 'Green Notices'. Those memoranda are made a part of this Section of the DDFM. All DRO personnel regardless of assignment shall refer to this Section when performing activities related to INTERPOL.

INTERPOL maintains six color-coded notices and subject advisory notices (Appendix ~~19.15~~). All notices and advisories are available to any of the over 180 member nations. However most distribution is limited to nations where the subject of the notice or advisory is likely to be encountered.

- An INTERPOL Red Notice is used to seek the arrest with a view toward extradition of subjects wanted and based upon an arrest warrant.
- An INTERPOL Blue Notice is used to collect additional information about a person's identity or illegal activities in relation to a criminal matter.
- An INTERPOL Green Notice is used to provide warnings and criminal intelligence about persons who have committed criminal offences and are likely to repeat these crimes in other countries.
- An INTERPOL Yellow Notice is used to help locate missing persons, especially minors, or to help identify persons who are not able to identify themselves.

- An INTERPOL Black Notice is used to seek the true identity of unidentified bodies.
- An INTERPOL Orange Notice is used to warn police, public bodies and other international organizations of possible threats to them from hidden weapons, parcel bombs, and other dangerous items or material.

II. POLICY

INTERPOL

DRO personnel shall complete 'Green Notice' applications (Appendix ~~19-16~~) as the situation dictates. Green Notice applications will be completed on those cases where the subject being removed is a registered sex offender and/or a known gang member whose "gang" conducts operations outside of the United States.

Blue Notice applications (Appendix ~~19-17~~) will be completed in cases "to collect additional information about a person's identity or illegal activities in relation to a criminal matter".

Where DRO has developed information that a *non*-criminal fugitive alien has fled to a foreign country and we are seeking to confirm that the alien has departed the United States, a Request for Foreign Verification (RFV) (Appendix ~~19-18~~), will be made to HQFUGOPS, electronically or via mail. HQFUGOPS will then utilize whatever resources available (Embassies, INTERPOL, etc.) and provide the requesting office with the information obtained.

The Chief, Fugitive Operations Unit has oversight responsibility for this program and will ultimately make the determination as to what applications will be forwarded to INTERPOL.

III. PROCEDURE

INTERPOL

When a Fugitive Operations Team¹ (FOT) uncovers information that a non-criminal alien fugitive may be outside of the United States, the team will complete a RFV (Appendix ~~19-19~~) to determine if the fugitive is outside of the country and/or if the fugitive has committed criminal offenses in a foreign country. Upon receipt of information in response to this request the FOT shall take appropriate case action that may include but is not limited to:

- Closure of an open case
- Further leads concerning the alien's possible location inside or out of the U.S.
- Updating of DACS with any foreign criminal arrest or conviction information or any other pertinent information germane to the case

¹ In the context of Section 2, FOTs or DRO personnel who conduct fugitive operations are to be considered one in the same.

The removing office will complete Green Notice applications (Appendix 19.46) for Operation Predator (OPPED) aliens, more particularly those registered as sex offenders, as part of the preparation for the removal. It is important that fields such as the Summary of Facts of the Case be thoroughly, but briefly, answered. This field should put a summary of the facts of the case and not just the statute violated. Furthermore, the field should record where the subject is a registered sex offender and any offender number assigned. The application should be completed and forwarded as soon as possible (such as aliens for whom a Third Agency Check must be requested) but in no case later than the same day as the Request for Escorted Country Clearance (RECC) is made, if appropriate. If a RECC is not made, the Green Notice application will be completed and forwarded to HQ FUGOPS as soon as practical after removal.

Blue and Green Notice applications shall be forwarded either electronically to the HQFUGOPS mailbox or hard copy via FedEx to:

DHS/ICE/DRO
801 I Street, NW, Suite 930
Washington, DC 20536

ATTN: HQ FUGOPS/INTERPOL

Any questions regarding operational requirements should be directed to the INTERPOL Liaison Officer, Headquarters, Fugitive Operations Unit through either the (b)(7)(E) mailbox or at (202) 353-(b)(6).

Any questions regarding this policy should be directed to (b)(6),(b)(7)(C) Chief, Headquarters Fugitive Operations Unit at (202)353-(b)(6),(b)(7)(C).



Office of the Deputy Attorney General
Washington, D.C. 20530

January 25, 2002

MEMORANDUM FOR COMMISSIONER
IMMIGRATION AND NATURALIZATION SERVICE

DIRECTOR
FEDERAL BUREAU OF INVESTIGATION

DIRECTOR
UNITED STATES MARSHALS SERVICE

UNITED STATES ATTORNEYS

FROM: THE DEPUTY ATTORNEY GENERAL 

SUBJECT: Guidance for Absconder Apprehension Initiative

A. Introduction

This memorandum is directed to those Department of Justice agencies that will be primarily responsible for implementing the Absconder Apprehension Initiative ("the Initiative"). The objective of this Initiative is to locate, apprehend, interview and deport a group of alien fugitives known as "absconders." These absconders are aliens who, though subject to a final order of removal, have failed to surrender for removal or to otherwise comply with the order. The Immigration and Naturalization Service ("INS") has determined that there are approximately 314,000 such individuals.

While the INS will ultimately undertake to deport all 314,000 from the United States, there are several thousand among that group who come from countries in which there has been Al Qaeda terrorist presence or activity. We want to focus our initial efforts on these priority absconders, as we believe that some of them have information that could assist our campaign against terrorism. Among these priority absconders is a group of fewer than a thousand, many of whom appear to be convicted felons, who will constitute the first list of absconders we will ask you to investigate.

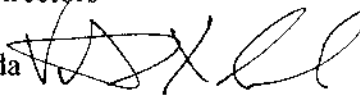
The purpose of this memorandum is to explain the process for apprehending and interviewing the priority absconders. That process will involve the following steps: (1) entry of the absconders into the National Crime Information Center database ("NCIC") by the INS; (2) assignment of the absconders by judicial district, based on the most current address information; (3) transmission of the relevant portions of each absconder's INS file to the INS Field Office in the assigned district; (4) assignment of the absconder fugitive investigations to apprehension teams

ALL INFORMATION CONTAINED
HEREIN IS UNCLASSIFIED
DATE 01-28-01 BY 304



U.S. Immigration and Customs Enforcement

MEMORANDUM FOR: Field Office Directors

FROM: Victor X. Cerda 
Acting Director

SUBJECT: Operation Predator Notices for Interpol

Purpose

Recently, each Field Office Director received a list of Operation Predator cases identified for their respective area of responsibility as well as instructions for completing Interpol Green Notice applications on each case. This memorandum serves as follow-up to that message and establishes policy for future case preparation in regards to cases removed pursuant to Operation Predator.

Background

The location, apprehension and removal of Operation Predator violators continues to be a priority for Immigration and Customs Enforcement (ICE). It is ICE's intent to ensure that these predators do not prey upon others upon their return to their country of origin. In light of this, an agreement has been reached between ICE/DRO and Interpol, U.S. National Central Bureau (NCB). Interpol-NCB will post Operation Predator cases in their database and provide Green Notice flyers to law enforcement agencies internationally to ensure these cases get the attention they require.

Discussion

Interpol maintains a system of five color-coded advisory notices on individuals and another five advisories for criminal operations (groups), property and criminal activities. All Interpol notices are available internationally through their database but, for the most part, their active distribution is restricted to locations where the subject of the advisory is likely to be encountered.

A Green Notice is an Interpol generated advisory that "provides information on career criminals who have committed, or are likely to commit, offenses in several countries (habitual offenders, child molesters, pornographers)". Operation Predator cases meet this definition. Interpol will be made aware of Operation Predator cases through the completion of Green Notice applications (attached).

Operation Predator Notices for Interpol

Page 2

Action

Effective immediately, a Green Notice Application will be completed at the time the Request for Escorted Country Clearance (RECC) is made. The application, together with a photo and a full set of prints, should be sent electronically to the HQFUGOPS mailbox, or, if not possible, by FEDEX to: DHS/ICE/DRO, 801 "I" Street, NW, Suite 800, Washington, D.C. 20536 Attn: HQFugOps/Interpol once the subject has been formally removed. A copy of the application is to remain in the A-file annotated with the date the application was forwarded to HQFUGOPS as well as the date of removal.

Efforts are currently underway to create the form electronically. In the interim, the application will be made available through the intranet at (b)(7)(E)

If you should have any questions, please contact (b)(6),(b)(7)(C) Chief, HQ Fugitive Operations at (202)353-(b)(6)

U.S. Department of Homeland Security
425 I Street, NW
Washington, DC 20536



**U.S. Immigration
and Customs
Enforcement**

JUL 13 2007

MEMORANDUM Field Office Directors
FOR: ICE Academy
 Detention and Removal Operations

FROM: John P. Torres
 Director
 Office of Detention and Removal
 Operations

SUBJECT: Accountability of Immigration Subpoenas

A handwritten signature in black ink, appearing to read "John P. Torres".

On behalf of ICE, the Office of Investigations is currently updating the legacy immigration subpoena directive and form. Until they are reissued, Detention and Removal Field Offices must continue using the legacy Immigration and Naturalization subpoena form (I-138). (See attached form)

Field Office Directors (FODs) are required to account for all subpoenas issued within their Area of Operational Responsibility (AOR) by maintaining both a log and copy of the subpoena issued. The log must contain, at minimum, the following information:

- 1) the title of proceedings, if any, for which the subpoena is issued;
- 2) the entity to whom the subpoena is served;
- 3) the issuing officer;
- 4) whether the subpoena was issued to compel the appearance of a witness to provide testimony, the production of books, papers or documents, or both appearance and production;
- 5) the date of service of the subpoena;
- 6) the means of service of the subpoena; and
- 7) a tracking number for each subpoena (tracked by fiscal year).

FODs must also ensure that all subpoenas are appropriately utilized and signed by the approved issuing authority. (See attached delegation order.)

Subpoenas that are sensitive in nature, or subpoenas requesting information that pertains to a large group of individuals, must be vetted through Headquarters

Memorandum for Field Office Directors
Accountability of Immigration Subpoenas
Page 2 of 2

Detention and Removal Operations (HQDRO) management. Examples of sensitive subpoenas include: a subpoena concerning a public official, a political candidate, the activities of a foreign government, the activities of a high foreign government official, the activities of a religious or political organization, or the activities of the news media.

If you have any questions or require additional information, please contact (b)(6), (b)(7)(C) Deputy Assistant Director, Compliance Enforcement Division, at 202-616-

(b)(6),
(b)(7)
(C)

U.S. Department of Homeland Security
U.S. Immigration and Customs Enforcement

Office of Detention and Removal Operations
Delegation Order

ORDER NUMBER:
DRO DO 07-001

ISSUE DATE:
MAR 13 2007

EFFECTIVE DATE:
MAR 17 2007

SUBJECT:
Authority to Issue Immigration Subpoenas Within the Office of Detention and Removal Operations.

DELEGATED BY:
Director, Office of the Office of Detention and Removal Operations

DELEGATED TO:
See below.

SOURCE OF AUTHORITY BEING DELEGATED:
ICE Delegation Order 73003.1, dated February 6, 2007

SUPERSEDED ORDER(S):
None.

DELEGATION:

By virtue of the authority granted to me by the Assistant Secretary in ICE Delegation Order 73003.1, dated February 6, 2007, I hereby delegate to Office of Detention and Removal Operations Assistant Directors, Deputy Assistant Directors, Field Office Directors, Deputy Field Office Directors, and Assistant Field Office Directors the authority to:

1. Issue immigration subpoenas requiring the person or entity to which they are addressed to attend and give testimony;
2. Require such persons or entities to produce records (books, papers, or other documents) for use in criminal or civil investigations;
3. Effect service of immigration subpoenas upon the persons or entities named therein;
4. Take testimony from such persons or entities under oath and examine, or cause to be examined, records produced by such persons or entities; and,
5. In the event that the person or entity named in a subpoena neglects or refuses to comply with the requirement to attend and give testimony or to produce records, request the United States Attorney for the district in which the subpoena was issued to report such neglect or refusal to the United States District Court and to request such court to issue an order requiring the witness to appear and testify and to produce the records designated in the subpoena.

This authority may not be redelegated.



John P. Torres
Director, Office of Detention and Removal Operations



U.S. Immigration
and Customs
Enforcement

MAY 20 2005

MEMORANDUM FOR: Field Office Directors

From:

(b)(6),(b)(7)(C)

Acting Director

(b)(6),(b)(7)(C)

Subject:

Addition of Chapter 19, Section 18,
International Police Organization
(INTERPOL) Of the Detention and
Deportation
Officer's Field Manual (DDFM)

The DDFM is updated to reflect the addition of Section 18, Chapter 19. Accordingly, the DDFM is updated as follows:

19.18 International Criminal Police Organization (INTERPOL)

I. Background

Headquarters, DRO has previously issued memoranda on the preparation of INTERPOL 'Green Notices'. Those memoranda are made a part of this Section of the DDFM. All DRO personnel regardless of assignment shall refer to this Section when performing activities related to INTERPOL.

INTERPOL maintains six color-coded notices and subject advisory notices (Appendix 19-15). All notices and advisories are available to any of the over 180 member nations. However most distribution is limited to nations where the subject of the notice or advisory is likely to be encountered.

- An INTERPOL Red Notice is used to seek the arrest with a view toward extradition of subjects wanted and based upon an arrest warrant.
- An INTERPOL Blue Notice is used to collect additional information about a person's identity or illegal activities in relation to a criminal matter.
- An INTERPOL Green Notice is used to provide warnings and criminal intelligence about persons who have committed criminal offences and are likely to repeat these crimes in other countries.
- An INTERPOL Yellow Notice is used to help locate missing persons, especially minors, or to help identify persons who are not able to identify themselves.
- An INTERPOL Black Notice is used to seek the true identity of unidentified bodies.

- An INTERPOL Orange Notice is used to warn police, public bodies and other international organizations of possible threats to them from hidden weapons, parcel bombs, and other dangerous items or material.

II. POLICY

INTERPOL

DRO personnel shall complete 'Green Notice' applications (Appendix 19-16) as the situation dictates. Green Notice applications will be completed on those cases where the subject being removed is a registered sex offender and/or a known gang member whose "gang" conducts operations outside of the United States.

Blue Notice applications (Appendix 19-17) will be completed in cases "to collect additional information about a person's identity or illegal activities in relation to a criminal matter".

Where DRO has developed information that a non-criminal fugitive alien has fled to a foreign country and we are seeking to confirm that the alien has departed the United States, a Request for Foreign Verification (RFV) (Appendix 19-18), will be made to HQFUGOPS, electronically or via mail. HQFUGOPS will then utilize whatever resources available (Embassies, INTERPOL, etc.) and provide the requesting office with the information obtained.

The Chief, Fugitive Operations Unit has oversight responsibility for this program and will ultimately make the determination as to what applications will be forwarded to INTERPOL.

III. PROCEDURE

INTERPOL

When a Fugitive Operations Team¹ (FOT) uncovers information that a non-criminal alien fugitive may be outside of the United States, the team will complete a RFV (Appendix 19-18) to determine if the fugitive is outside of the country and/or if the fugitive has committed criminal offenses in a foreign country. Upon receipt of information in response to this request the FOT shall take appropriate case action that may include but is not limited to:

- Closure of an open case
- Further leads concerning the alien's possible location inside or out of the U.S.
- Updating of DACS with any foreign criminal arrest or conviction information or any other pertinent information germane to the case

¹ In the context of Section 2, FOTs or DRO personnel who conduct fugitive operations are to be considered one in the same.

The removing office will complete Green Notice applications (Appendix 19-16) for Operation Predator (OPPED) aliens, more particularly those registered as sex offenders, as part of the preparation for the removal. It is important that fields such as the Summary of Facts of the Case be thoroughly, but briefly, answered. This field should put a summary of the facts of the case and not just the statute violated. Furthermore, the field should record where the subject is a registered sex offender and any offender number assigned. The application should be completed and forwarded as soon as possible (such as aliens for whom a Third Agency Check must be requested) but in no case later than the same day as the Request for Escorted Country Clearance (RECC) is made, if appropriate. If a RECC is not made, the Green Notice application will be completed and forwarded to HQ FUGOPS as soon as practical after removal.

Blue and Green Notice applications shall be forwarded either electronically to the HQ FUGOPS mailbox or hard copy via FedEx to:

DHS/ICE/DRO
801 I Street, NW, Suite 930
Washington, DC 20536

ATTN: HQ FUGOPS/INTERPOL

Any questions regarding operational requirements should be directed to the INTERPOL Liaison Officer, Headquarters, Fugitive Operations Unit through either the (b)(7)(E) mailbox or at (202) 353-(b)(6),

Any questions regarding this policy should be directed to (b)(6),(b)(7)(C) Chief, Headquarters Fugitive Operations Unit at (202) 353-(b)(6),

U.S. Department of Homeland Security
4251 Street, NW
Washington, DC 20536



U.S. Immigration and Customs Enforcement

MEMORANDUM FOR: Assistant Directors
Deputy Assistant Directors
Field Office Directors
Deputy Field Office Directors

FROM: John P. Torres
Director

AUG 24 2007

SUBJECT: Juveniles Encountered During Fugitive Operations

Purpose

This memorandum provides clarification to the Office of Detention and Removal Operations (DRO) Fugitive Operations Teams (FOT) who encounter U.S. citizen (USC) and Lawful Permanent Resident (LPR) juveniles during execution of enforcement initiatives targeting fugitive aliens.

Summary

The attached memorandum entitled "*ICE Transportation, Detention and Processing Requirements*" remains the binding guidance to Special Agents-in-Charge (SAC) and Field Office Directors (FODs) while conducting immigration enforcement operations. However, as a matter of policy, DRO FOTs should not take custody of or transport a juvenile (i.e. child under the age of 18) who is either a USC or LPR and who is not being processed for an immigration violation. FOTs, who encounter a fugitive alien responsible for the custody of a USC/LPR juvenile, must, in this order of preference, coordinate the transfer of the USC/LPR juvenile into the safekeeping of (1) the nearest child welfare authority; (2) local law enforcement; or if options (1) and (2) are inconsistent with operational requirements, then FOTs must (3) carefully document the fugitive alien's request for transfer of the USC/LPR juvenile into the safekeeping of a verifiable third party.

The use of the first two options is strongly encouraged. Child welfare authorities and local law enforcement are better suited for making determinations related to child custody matters. Even when the fugitive alien demands transfer to a third party, FOTs are to work through child welfare authorities or local law enforcement and defer to their transfer determinations. Under limited circumstances and only when specifically approved by their FOD, FOTs may temporarily safeguard USC/LPR minors.

To the greatest extent possible, FOTs should coordinate with child welfare authorities prior to arrest of fugitive alien parents. All DRO FOTs and FOT members must maintain a current and relevant list of contacts for such agencies.

SUBJECT: Juveniles Encountered During Fugitive Operations

Page 2

If the child welfare authority and local law enforcement cannot respond in a timely manner, so as to jeopardize operational objectives, and the fugitive alien requests assistance in transferring safekeeping of the USC/LPR juvenile to a third party, FOTs should:

1. Document the inability of the welfare authority and local law enforcement to take timely custody of the minor;
2. Document in writing the fugitive alien's request to release the USC/LPR juvenile to an identified third party (preference is for the request in the fugitive alien's own handwriting);
3. Facilitate the fugitive alien's contact with the third party;
4. Verify the identity of the third party through government issued identity cards prior to transferring the USC/LPR juvenile into the safekeeping thereof; and
5. Forward copies of relevant documentation (inability of the welfare authority/local law enforcement to take timely custody of the USC/LPR juvenile) to the child welfare authority for further processing.

Where the child welfare authority and local law enforcement are unresponsive and the fugitive alien parent identifies no third parties, FOTs should seek guidance from their FOD through their chain of command.

In exigent circumstances, when all of the above options are unavailable, it is recommended that the sole care provider be placed on one of the Alternatives to Detention (ATD) programs available in the respective Field Office; all ATD processing should be done on site.

Questions regarding this policy should be addressed to (b)(6),(b)(7)(C) Deputy Assistant Director (DAD), Compliance Enforcement Division (CED) at (202) 616-(b)(6), or via e-mail at (b)(6),(b)(7)(C) @ice.dhs.gov.

consisting of INS, Federal Bureau of Investigation ("FBI") and other federal agents and, where appropriate, members of the Anti-Terrorism Task Forces ("ATTFs"); (5) apprehension of the absconders; (6) interviews of the absconders by the apprehension teams; (7) entry of the results of the interviews into the database; and (8) prosecution or removal of the absconders.

While there are aspects of this Initiative that are similar to the Interview Project that was recently conducted by the ATTFs, I want to make clear that this is a very different undertaking. The Interview Project was directed at individuals who were not suspected of involvement in criminal activity, and investigators' contacts with the individuals were entirely consensual. This Initiative, by contrast, is directed at persons who have violated the law by remaining in the country after issuance of a deportation order and, in some cases, by committing other criminal offenses. Unlike the subjects of the Interview Project, therefore, these absconders are to be apprehended and treated as criminal suspects, and they are to be afforded all standard procedural rights and constitutional protections. In addition, while the Department and certain United States Attorneys' Offices intentionally publicized the Interview Project, this Initiative will not entail any official notice to either the public or the absconders. It would be counterproductive, and potentially dangerous, to provide the absconders with official warning that agents and officers will be seeking to locate and capture them.

This Initiative will require a sustained and vigorous effort by a number of federal law enforcement agencies. As the agency tasked with enforcement of the immigration laws, the INS will be the lead investigative agency in all phases of the Initiative. The United States Attorneys will be responsible for coordinating the assignment of ATTF members to the apprehension teams, ensuring that the results of interviews of captured absconders are entered into the database, and handling any prosecutions arising out of this Initiative. The FBI Field Offices and their Joint Terrorism Task Forces ("JTTFs") will actively participate in the apprehension effort, and they will be responsible for assessing each arrested absconder to determine whether the FBI has an interest in that absconder as a criminal suspect or as a source of information. Finally, it is expected that the United States Marshals Service ("USMS"), with its vast experience in capturing federal fugitives, will play a significant role in the apprehension effort.

B. The Process

1. Creation of the List of Absconders

The Foreign Terrorist Tracking Task Force ("FTTTF") drew the names of the priority absconders from the INS' Deportable Alien Control System ("DACS"). In order to finalize the list, the FTTTF is currently completing the following tasks: (1) running the absconders on the list through public source databases to determine a last known address in the United States; (2) using the last known address information to designate an investigating district for each absconder; (3) cross-checking the entire list against the PENTTBOM investigation database to determine whether any of these absconders has previously been identified as having a connection to that investigation; and (4) cross-checking the entire list against the FBI's other databases to determine if any of the

TRANSPORTATION CONSENT FORM
Department of Homeland Security
Immigration and Customs Enforcement

Know all men by these presents:

Whereas I, _____, give my consent for my child
(NAME)

_____ to be a passenger on DHS/ICE aircraft/vehicle
(NAME)

_____. I give my consent freely and entirely on my own initiative.
... (TAIL/LICENSE NO.)

Signed: _____

Address: _____

Date: _____

Witness: _____

(NAME AND TITLE)

Additional documents required for deported Aggravated Felons entries are:

- Criminal history documents such as judgment and conviction records that indicates sentencing information, qualifying the offense an aggravated felony.

Scanning Requirements

Documents must be scanned in color, using:

- a portable document format (pdf), and,
- a minimum of 600 dots per inch (dpi).

Scanned documents may be sent to the LESC E-mail inbox at (b)(7)(E)

Criminal warrant NCIC entries must include:

- a copy of the Criminal Warrant for Arrest issued by a United States District or Magistrate Court, signed by either the Federal District Court Judge, a Magistrate or other court official.
- A CF-59, Customs Fugitive Report, which must include:
 - all pertinent information as annotated in "red" on the form; and,
 - the signature of the case agent and the approving SAIC/RAIC/FOD.
- Both the Criminal Warrant and the CF-59 must be submitted to the LESC for entry within 24 hours of the issuance of the warrant. If submission is outside the 24 hour period, a reason for the delay must be annotated in the Block 32 remarks section.
- Additional supporting documentation such as copies of the criminal complaint, indictment, photo, or fingerprints are welcomed if available, but not required.
- In the event that multiple defendants are processed under the same case number, use the case number followed by the subject's last name (i.e. CR-1234- 09 – Jones, CR-1234-09-Smith).



U.S. Immigration
and Customs
Enforcement

AUG 12 2009

MEMORANDUM FOR: Field Office Directors
Deputy Field Office Directors

FROM: (b)(6),(b)(7)(C)
Acting Director

SUBJECT: Guidance for E-mailing Scanned Documents to the Law
Enforcement Support Center (LESC) for Entry into the National
Crime Information Center (NCIC)

Purpose

This memorandum replaces previous guidance regarding the physical shipment of A-Files as outlined in the June 13, 2008, guidance entitled *Updated Requirements for the Placement of ICE Fugitive, Deported Aggravated Felon Cases and Criminal Warrants into the NCIC Immigration Violator File*.

Background

The Absconder Apprehension Initiative established Standard Operating Procedures for the entry of ICE fugitives as 'Lookouts' into the NCIC system by the Office of Detention and Removal Operations (DRO). This procedure included shipping the ICE fugitive's complete A-file to the LESC for the manual input of information into NCIC as well as the long-term storage of that A-file. This process is costly and removes the A-file from the field. LESC is currently in the process of digitally scanning all documentation necessary for entering an ICE fugitive into NCIC. The following procedure shall replace the previous method of shipping the A-file to LESC.

Procedure

DRO personnel will be required to scan and e-mail the following documents to LESC for entry into the NCIC:

- Warrant of Removal (I-205), both sides
- FD-249 Fingerprint card, both sides
- Photograph
- Record of Deportable / Inadmissible Alien (I-213), or
- Information for Travel Document or passport (I-217)

U.S. Department of Homeland Security
425 I Street, NW
Washington DC 20536



U.S. Immigration
and Customs
Enforcement

DEC 11 2006

MEMORANDUM FOR: Field Office Directors
Assistant Directors
Deputy Assistant Directors

FROM: John P. Torres
Director

A handwritten signature in black ink, appearing to read "John P. Torres".

SUBJECT: Standard Operating Procedures, Escapes and Releases

Purpose

This memorandum serves to ensure that the Field Offices develop an Escapee Locate Plan, follow a standard protocol, and report their activities in a timely manner when locating aliens who escape from U.S. Immigration and Customs Enforcement (ICE) secure detention or are erroneously released. This memorandum does not supersede my July 14, 2006, memo, which established a directive on Escape Reporting; but does provide additional guidance in the reporting and locating of escapees. In the event of an escape, the Field Office's Fugitive Operations Team (FOT), or other assigned Deportation Officers, will focus on the investigation, tracking, and locating of the escapee as described below. Officers will also maintain close liaison with their local Detention Management representative.

Background

DRO has a procedure in place regarding the reporting of escapes from ICE secure detention. The following checklist will act as a guide for the Field Offices to ensure consistency with regards to their investigations. These investigations may be similar to the Fugitive Operations investigations the field conducts in the location of aliens with final removal orders, yet the high-profile nature and urgency of these escapee or erroneous release cases require stricter compliance with investigation and capture procedures.

Responsibilities

The Fugitive Operations Supervisor or Supervisory Detention and Deportation Officer (SDDO) of the team assigned to the investigation will be the senior officer in charge of the escape investigation. He or she will have the responsibility for:

- A. Directing and immediately opening a "locate" case under the National Fugitive Operations Program (NFOP) Standard Operating Procedures (SOP);
- B. Ensuring that the Field Office maintains 24/7 coverage on National Crime Information Center (NCIC) callouts concerning the case;

- C. Compiling a list of personnel, equipment, and funding requirements needed to support the location of the escapee;
- D. Ensuring compliance with the Headquarters notification requirements outlined in the July 14, 2006, policy memorandum entitled "Escape Reporting," and providing updates via the Significant Incident Report (SIR) notification process and other case management systems to assist with de-confliction within multi-jurisdictional areas;
- E. Ensuring that the local Victim/Witness coordinator is notified of escape, if applicable; and
- F. Completing all required actions as specified in the attached "Escapee Checklist." Each action shall be initialed and dated by the case officer upon completion of each individual task. The Fugitive Operations Supervisor or responsible SDDO shall review and sign off on the checklist at the bottom of the form. The checklist will be forwarded via fax to the Fugitive Operations Branch at Headquarters upon completion of the investigation (Fax Number: 202-616-(b)(6)).

Procedures

A. Database Entry

The case officer should complete the following prior to the investigation:

1. Enter the case into the Enforcement Case Tracking System and Automated Fingerprint Identification System (ENFORCE/IDENT) "lookout";
2. Enter the escape information into the Deportable Alien Control System (DACS) "case comments" screen;
3. Contact the Law Enforcement Support Center (LESC) for emergency entry of a "lookout" in NCIC and the National Law Enforcement Telecommunications System (NLETS); and
4. Enter case as a "lookout" in the Treasury Enforcement Communications System (TECS).

B. Notifications

1. The officer in charge of the escape investigation (case officer) shall coordinate with the ICE Office of Investigations (OI).
2. At the Field Office Director's (FOD's) discretion, the case officer shall notify the local and state police, United States Marshals Service, the Federal Bureau of Investigation, and the United States Attorney's Office. If federal or state warrants exist on the escapee, notify and coordinate with the aforementioned agencies, as appropriate.
3. The case officer should prepare "wanted" posters for distribution to various law enforcement agencies with a need to know of the escape.
4. The case officer should contact the local U.S. Marshal Electronic Surveillance Unit (ESU), in order to ascertain its requirements for accepting cases.
5. The case officer should notify the Joint Intake Center (JIC).

C. Investigation

At the FOD's discretion, Field Offices which experience a detainee escape should determine whether federal prosecution should be sought under 18 U.S.C. § 751 (a). If prosecution is anticipated, the FOD should oversee ICE efforts to assist in the preparation of a complaint by the United States Attorney's Office. If the escapee is indicted before a Grand Jury and a Warrant of Arrest is issued, the LESC shall be notified for entry into NCIC.

At a minimum, the case officer should initiate the following investigative leads:

1. Interview institution official or agent who last had custody of the escapee;
2. Interview cellmate or close friends if applicable;
3. Obtain copies of visitor logs from any institution the escapee may have been detained;
4. Obtain copies/recordings from these institutions of recent phone numbers/conversations between the escapee and the outside parties;
5. Obtain copies of closed circuit television recording the day of the escape;
6. Obtain copies of all contacts the escapee listed in the administrative A-file or Detention folder;
7. Obtain copies of computer indices checks, (e.g., NCIC/III, TECS, local criminal checks, Department of Motor Vehicles checks, commercial databases, etc.);
8. Complete thorough background check on all family members, spouse (current and former), and or girlfriends/boyfriends, and other known associates, utilizing any of the aforementioned databases; and
9. Consult 01, the Compliance Enforcement Unit (CEU) within OI, financial databases, and any other applicable databases.

D. Reporting/Closing Actions

Upon any initiation of field surveillance in an attempt to locate an escapee, Field Offices should provide weekly Reports of Investigation (G-166c) to the Unit Chief of the National Fugitive Operations Program at headquarters detailing the status of leads and case progress.

Upon arrest of the escapee, Field Offices should promptly (i.e., within one hour) notify the Unit Chief of the National Fugitive Operations Program at DRO headquarters with a follow up SIR, via the SEN database.

Field Offices should also initiate the following database closures:

1. Notify the Detention Management Division so it can initiate closure in the National Escape Tracking System;
2. Report arrest via SIR;

3. Update "case comments" screen in DACS;
4. Coordinate removal of case from TECS and NCIC;
5. Notify law enforcement personnel involved in efforts to locate escapee; and
6. Update ENFORCE and Detention and Removal modules, when deployed.

Please contact (b)(6),(b)(7)(C) the National Fugitive Operations Program Unit Chief at 202-616-
(b)(6),
(b)(7)(C) with any questions.

Attachment



U.S. Immigration
and Customs
Enforcement

Escapee Checklist

DATABASE ENTRY

Date Initials

Ensure SIR & Escape Report were completed
Enter case into ENFORCE/IDENT lookout
Enter case information into DACS case comments
Contact LESC for emergency entry in NOC/NLETS lookout system
Enter case as a lookout in TECS

NOTIFICATIONS

Notify HQDRO through SIR within 24 hours/Forward Escape report to HQDRO Detention Management Div.
Notify ICE Office of Investigations (mandatory)
Notify local and state police (at discretion)
Notify US Marshals (at discretion)
Notify Federal Bureau of Investigation - FBI (at discretion)
Notify United States Attorney's Office (at discretion)
Create Wanted Posters for distribution to law enforcement
Contact US Marshals Electronic Surveillance Unit (ESU) if phone numbers available

INVESTIGATION

Interview institution official or agent who last had custody of the escapee
Interview cellmate or close friends (if applicable)
Obtain copies of visitor logs from any institution the escapee may have been detained
Obtain copies/recordings of institutions recent phone numbers/conversations with escapee and die outside
Obtain copies of CCTV recording the day of the escape (in an institution or in the field)
Obtain copies of all contact the escapee listed in the Alien file or Detention folder
Obtain copies of computer indices checks (i.e. NCIC/II, TECS, DMV checks, commercial databases, etc.)
Complete thorough background checks on all family members found through database checks
Coordinate CEU, commercial and other OI database checks with Office of Investigations

REPORTING/CLOSING ACTIONS

Provide weekly G-166c to the Chief of FUGOPS detailing leads and case progress
Upon arrest, notify the Chief of FUGOPS within one hour of arrest with follow up SIR
Notify Detention Management Division so they can initiate closure on NETS
Report arrest/capture via SIR
Notify appropriate law enforcement personnel involved in search of escapee
Update case comments in DACS
Coordinate removal of case from TECS and NCIC
Route file to appropriate SDDO for preparation of written report to HQDRO

Signature of SDDO

Date



**U.S. Immigration
and Customs
Enforcement**

SEP 11 2009

MEMORANDUM FOR: All Program Directors
FROM: (b)(6),(b)(7)(C) (b)(6),(b)(7)(C)
Deputy Assistant Secretary, Operations
SUBJECT: Reporting Use of Force Incidents

Purpose

This memorandum is to remind all U.S. Immigration and Customs Enforcement (ICE) law enforcement personnel of the proper reporting procedures for use of force incidents as contained in the interim ICE Use of Force Policy.

Background

Timely and accurate reporting of use of force incidents involving ICE law enforcement employees is an important aspect of public safety and protects the interests of ICE and its employees. Use of force incident reports are reviewed and analyzed by the National Firearms and Tactical Training Unit (NFTTU) to identify the need for improved equipment, training and policy related to this subject. The interim ICE Use of Force Policy contains the requirements for reporting use of force incidents, including the use of deadly force, the discharge of firearms, the use of hard techniques, chemical agents and intermediate use of force devices. The interim ICE Firearms Policy requires all ICE officers to receive quarterly training on ICE use of force policies, to include reporting procedures and the ICE Use of Force continuum.

In addition to sending the initial Significant Event Notification (SEN), use of force incidents require the submission of reports to the NFTTU and the Office of Professional Responsibility (OPR). The time frames for submission and level of detail required in these reports are outlined in the interim ICE Use of Force Policy and vary depending on the type of force used.

Discussion

During a recent review, the NFTTU discovered that a significant discrepancy existed between the number of incidents reported to the ICE Reporting Operations Center (IROC) and what was reported to the NFTTU. To ensure all reports are submitted in accordance with the procedures and time lines required by ICE policy, the following information is provided as your guide for notifications:

Use of Force Reporting to the NFTTU:

- Reports submitted electronically should be e-mailed to NFTTU@dhs.gov.

SUBJECT: Reporting Use of Force Incidents

Page 2

- Reports submitted by facsimile should be transmitted to (202) 732- (b)(6), (b)(7)(C)
- For reports that are hand-carried, delivered by overnight shipping carriers or by U.S. Mail, use the following address:

U.S. Immigration and Customs Enforcement
National Firearms and Tactical Training Unit (NFTTU)
500 12th Street, SW, Room 5008
Washington, DC 20024

Use of Force Reporting to OPR.

- Reports may be emailed to the Joint Intake Center electronically to (b)(6), (b)(7)(C) @dhs.gov
- Questions may be directed to the Joint Intake on: 1-877- (b)(6), (b)(7)(C)
- Reports can be submitted via facsimile to (202) 344- (b)(6), (b)(7)(C)
- Reports that are hand-carried, delivered by overnight shipping carriers or by U.S. Mail, should use the following mailing address:

U.S. Immigration and Customs Enforcement
Office of Professional Responsibility
Joint Intake Center
P.O. Box 14475
1200 Pennsylvania Avenue, NW
Washington, DC 20044

The NFTTU has also compiled an overview of the proper processes for reporting use of force incidents in a Frequently Asked Questions (FAQ) format that should be a useful tool for all ICE law enforcement employees, their supervisors and managers. These steps were taken directly from the interim ICE Use of Force Policy and do not establish any new ICE processes or procedures. The FAQ overview document is attached for your convenience and will also be posted on the NFTTU web site.

Interim ICE Firearms and Use of Force Policies are also available online at the NFTTU web site on the ICE Intranet at <http://intranet.ice.dhs.gov/sites/nfttu/> by clicking on the Firearms and Force Policies and Guidelines Quick Link located in the right margin of the web page.

Please ensure this information is distributed to all personnel within your program. Questions regarding this memorandum, and firearms and use of force policies in general should be directed to (b)(6), (b)(7)(C) Director, NFTTU at (b)(6), (b)(7)(C) @dhs.gov.

Attachment

absconders has been entered as a subject or target of any other investigation. If there is a match for any absconder in the PENTTBOM database or the other FBI databases, the FTTTF will remove that absconder from the list for this Initiative. This filtering process will help to ensure that the list of absconders does not include individuals who are subjects of active terrorism investigations.

2. Entry of the Absconders into NCIC

The FTTTF will transmit the finalized list of priority absconders to the INS Headquarters Investigations Division, where agents will obtain and examine the absconders' INS Administrative Files ("A-Files"). Agents will confirm that each A-file contains documentation reflecting that the absconder had received notice that he was to be deported or, for those absconders who failed to appear at their deportation hearings, that he would be deported if he so failed to appear. After confirming that the absconder was on notice and that the deportation warrant remains valid, the agents at the Investigations Division will transmit the absconders' A-Files to the INS Law Enforcement Support Center in Burlington, Vermont for entry of the absconders' names into NCIC. At the same time, the list of absconders assigned to each district will be distributed to the INS and FBI Field Offices and to the United States Attorney's Office in each district.

3. Transmission of Documents from the Absconders' A-Files

The INS will create a "fugitive folder" for each absconder on the list. These folders will contain duplicates of relevant documents from the absconder's original A-File. INS Headquarters will then transmit the fugitive folder for each absconder to the INS Field Office in the judicial district of the absconder's last known address. If no last known address information exists, the fugitive folder will be sent to the district of the office of origin for the alien's deportation proceeding.

4. District Coordination Meeting

Each INS and FBI Field Office will appoint an Initiative Coordinator who will be responsible for overseeing his or her agency's involvement in the Initiative in that district. Prior to receipt of the fugitive folders, those Coordinators will meet with the United States Attorney's Anti-Terrorism Coordinator to discuss plans for implementation of the Initiative. At those meetings, the three Coordinators should: (1) make arrangements for consultation among themselves throughout the apprehension process; (2) determine how to staff each of the "apprehension teams," consistent with the guidance below; (3) decide who will check the list of absconders against local and/or state criminal databases; (4) discuss how to handle fugitive investigations that extend outside the district; and (5) decide any other logistical issues relating to timely implementation of this Initiative.

5. Assignment of Absconder Cases to the Apprehension Teams

Upon receipt of the absconder fugitive folders, the INS Coordinator must contact his or her

ICE Use of Force Reporting Overview

Why report use of force incidents?

The timely and accurate reporting of use of force incidents involving ICE law enforcement employees is important for public safety purposes and to protect the interests of the agency and its employees. It is also a requirement in the interim ICE Use of Force Policy.

What is a reportable use of force incident?

The use of deadly force, the discharge of a firearm, the use of hard techniques, chemical agents and intermediate use of force devices are all reportable use of force incidents. In addition to any initial significant incident reporting requirement, all reportable ICE use of force incidents require the submission of a report to the National Firearms and Tactical Training Unit (NFTTU). The time frames for submission and level of detail in those reports are outlined in the interim ICE Use of Force Policy and depend on the type of force used.

Where can you find the reporting processes?

The interim ICE Use of Force Policy contains the requirements for reporting any use of force, including deadly force, the discharge of a firearm, the use of hard techniques, chemical agents and intermediate use of force devices. The interim ICE Firearms Policy requires all ICE officers to receive training each quarter on the ICE and DHS policies on use of force, to include reporting procedures and the ICE use of force continuum.

The interim ICE Firearms and Use of Force Policies can be easily located on the NFTTU site on the ICE Intranet at <http://intranet.ice.dhs.gov/sites/nfttu/> by clicking on the Firearms and Force Policies and Guidelines Quick Link located in the right margin of the web page.

If an ICE officer uses deadly force, how is it reported?

When officers use deadly force, the incident must be reported as follows:

- The officer must immediately report the incident to their supervisor.
- The supervisor shall immediately report the incident to the Responsible Official as identified in the ICE Firearms Policy.
- The supervisor will also immediately notify the ICE Reporting Operations Center (IROC) of the incident.
- The supervisor will ensure notification of local law enforcement authorities in incidents involving property damage, bodily injury, or death.

ICE Use of Force Reporting Overview

- The ICE IROC shall immediately notify the Office of Professional Responsibility (OPR), the Director of the appropriate operational component, and the Director of the National Firearms and Tactical Training Unit (NFTTU).
- In accordance with DHS Office of Inspector General (OIG) requirements, the ICE OPR shall notify the DHS OIG, of the misuse or improper discharge of a firearm, except for discharges which occur during firearms training, practice, or qualification, and do not cause any injury to a person or animal, or damage to property

Is this the end of the reporting process?

No, it is just the beginning. Verbal reports must be followed by written reports prepared by the officer's first line supervisor.

- Supervisors are responsible for sending written reports to OPR within five (5) business days.
- Copies of the written reports will be sent to the Director of the appropriate operational component and Director of the NFTTU within ten (10) business days.
- When deadly force is used, the initial written report must be on an ICE Use of Force Incident Report, NFTTU Form 10 (Appendix 3 of the interim ICE Use of Force Policy) and shall contain the information listed in Appendix 2 of the interim ICE Use of Force Policy, *Shooting or Use of Force Incident Investigation Reports*.
- As additional information is obtained, the supervisor is responsible for supplementing written reports with such information.
- All shooting incident investigations, conducted by field officials and not OPR, should be completed within sixty (60) days whenever possible and the investigation report(s) sent to OPR. In the event that evidence critical to the investigation is not available within sixty (60) days, updated status reports on open cases will be forwarded to OPR as each is completed.
- OPR must be contacted to determine if any additional reporting requirements or duties are required by subsequent DHS, ICE or OPR policies, directives or procedures.

Do we have to report every discharge of a firearm?

In almost all cases, firearms discharges, whether intentional or unintentional, must be reported in accordance with the requirements for a deadly force incident contained in Part

ICE Use of Force Reporting Overview

2.A of the interim ICE Use of Force Policy. Reportable firearms discharges include:

- Any incident that involves the discharge of an ICE-issued firearm, including by any person other than an ICE officer;
- Any incident that involves the discharge of an ICE-approved personally owned handgun, including by any person other than an ICE officer;
- Any incident that involves the discharge of a firearm as an act of assault against any ICE officer or employee, and the assault is, or reasonably appears to be, related to his or her ICE employment;
- Any incident, which involves the discharge of a firearm by a law enforcement officer other than an ICE officer, when the discharge occurs during multi-agency operation involving ICE officers; or
- The discharge of specialty impact munitions from a conventional firearm or a launcher specifically designed to expel these types of projectiles.
- The use of firearms to discharge chemical munitions or specially-designed breaching munitions against structures does not constitute the use of deadly force, unless there is reason to believe that the chemical munitions or specially-designed breaching munitions may cause the death of a person (e.g., may cause a fire).

What about the shooting of an animal?

- As specifically stated in the interim ICE Use of Force Policy, the discharge of firearms against persons or animals constitutes the use of deadly force

Are there any exceptions to reporting firearm discharges?

- Shooting incident reporting requirements do not apply to the discharge of firearms during authorized training while on the firing line (i.e., practice, qualification and function testing) when no personal injury or property damage occurs.

What about reporting the use of Hard Techniques and/or Chemical Agents?

When officers employ an approved baton as a hard technique or chemical agents to control a person, the officer shall immediately report the incident in accordance with the procedures outlined below:

ICE Use of Force Reporting Overview

- When officers employ hard techniques and/or intermediate force weapons to control a person, they shall immediately report the matter to their supervisor.
- Verbal reports must be followed by a written report prepared by the officer's first line supervisor containing the information outlined in Part 2.A.4 of the interim ICE Use of Force Policy.
- Supervisors are responsible for sending written reports to the OPR within five (5) business days.
- Copies of the written reports will be sent to the Director of the appropriate operational component and Director of the NFTTU within ten (10) business days.
- NOTE: The use of hard techniques or chemical agents that subsequently result in serious bodily injury or death will be reported following the processes for deadly force or discharge of a firearm.
- Also, when specialty impact munitions are employed as a hard technique to control a person, the officer shall immediately report the incident in accordance with the procedures prescribed for the use of deadly force/discharge of a firearm.

How do you get the reports to the NFTTU?

The following methods are to be used when submitting information on use of force incidents to the Director, NFTTU as specified in the interim ICE Use of Force Policy:

- Reports submitted electronically should be e-mailed to (b)(6),(b)(7)(C) dhs.gov.
- Reports submitted by facsimile should be transmitted to (202) 732-(b)(6),(b)(7)(C)
- For reports that are hand-carried, shipped by overnight shipping companies or by U.S. Mail, use the following address:

U.S. Immigration and Customs Enforcement
National Firearms and Tactical Training Unit (NFTTU)
500 12th Street, SW, Room 5008
Washington, DC 20024

How do you get the reports to OPR?

The following methods are to be used when reporting Use of Force to OPR.

- Reports may be emailed to the Joint Intake Center electronically to (b)(6),(b)(7)(C) dhs.gov
- Questions may be directed to the Joint Intake on: 1-877-(b)(6),(b)(7)(C)

ICE Use of Force Reporting Overview

- Reports can be submitted via facsimile to FAX # (202) 344-(b)(6),(b)(7)(C)
- Reports that are hand-carried, delivered by overnight shipping carriers or by U.S. Mail, should use the following mailing address:

U.S. Immigration and Customs Enforcement
Office of Professional Responsibility
Joint Intake Center
P.O. Box 14475
1200 Pennsylvania Avenue, NW
Washington, DC 20044



U.S. Immigration
and Customs
Enforcement

JUL 20 2004

MEMORANDUM FOR: Field Office Directors
Deputy Field Office Directors

FROM: (b)(6),(b)(7)(C) Acting Director (b)(6),(b)(7)(C)

SUBJECT: Use of Restraints

Detention and Removal Operations policy regarding the use of restraints on individuals is contained both in the use of Restraints Enforcement Standard and the Escorts Enforcement Standard. Standard III. C. requires that each officer will make an assessment of the detainee's risks to the public, the escorting officer(s), and him or herself, as well as the likelihood of absconding when determining whether to use restraints. This assessment will include, at a minimum, a review of the detainee's criminal violations (if any), aggressive or asocial behavior, suspected influence of alcohol or drugs, physical condition, sex, age, and medical condition. Officers should also take into consideration the nature of the assignment such as type of detainee, length of travel, destination, and exposure of the individual to the public. This is a reminder that only that amount of restraint needed to ensure the safety of the officer, the detainee, and the public and/or to prevent escape shall be employed.

As our current Escorts Enforcement Standard makes clear, transporting officers will not handcuff women or minors. When an officer determines that conditions warrant the use of restraints for members of a family unit, females or juveniles, the officer must be able to articulate the conditions that require the restraints, in accordance with Standard III. C. If an exception arises, the officer or contract guard will document the incident, recording the facts and reasoning behind the decision to use restraints. This is a restatement of our present policy.

In situations involving DRO contract guards supporting Customs and Border Protection (CBP), CBP Supervisors will make recommendations, based on articulate facts, on whether the individual should be restrained. DRO guards shall take that recommendation into consideration when making a determination. If the contract guard disagrees with the CBP supervisor, the guard should contact a DRO supervisor for review.

All Field Office Directors are tasked with ensuring that all officers and contract guards under their area of jurisdiction are aware of the standards relating to the proper use of restraints, the use of

Use of Restraints

Page 2

restraints on women and minors, and the documentation requirements. Officers and contract guards shall be instructed to use authorized techniques and discretion when deciding whether to apply restraints.

Field Operations Directors are to acknowledge receipt of this memorandum and acknowledge that all officers under their jurisdiction are familiar with the policies referred to herein. Acknowledgements should be sent to (b)(6),(b)(7)(C) by cc:mail no later than July 23, 2004.

counterparts at the FBI and the United States Attorney's Office. The three Coordinators should then jointly decide how to staff the apprehension teams. The composition of the apprehension team assigned to each absconder will vary from district to district, depending upon agency staffing, the number of open absconder cases in the district, and the Coordinators' judgment about the appropriate manner of making assignments. If the INS and FBI in a particular district lack the manpower to conduct the fugitive investigations and apprehensions in a timely manner -- or if their agents are occupied with other investigations -- the United States Attorney will solicit assistance from the members of the Anti-Terrorism Task Force in that district.

The apprehension teams will each be provided with copies of the fugitive folder and any relevant background material for each absconder, a copy of the interview questions and any operational instructions developed by the Coordinators.

6. Apprehension of the Absconders

Every absconder who is located will be apprehended and taken into custody. The legal basis for that custody may differ depending on the law enforcement members on the apprehension team. If INS is represented on the apprehension team, the absconder can be arrested pursuant to the INS' authority under 8 U.S.C. §1357 to arrest individuals on the basis of the civil warrant of deportation or removal. Because only INS agents have that clear authority, apprehension teams that do not include INS agents may not arrest absconders solely on the basis of the civil warrant. Instead, they can arrest absconders on the basis of probable cause that the absconder has committed the federal felony violation of Failure to Depart under 8 U.S.C. § 1253. The probable cause that the absconder has committed that offense would be based on the existence of a final deportation order and the absconder's presence on American soil.

7. Interviewing the Absconders

When an absconder is arrested, the arresting officers or agents will interview him about his knowledge of terrorist activity. The absconder should be advised of his rights under *Miranda v. Arizona* prior to the interview, and the interview should proceed only if he waives those rights.

The interview should follow the list of questions that will be provided to all Anti-Terrorism Coordinators for distribution to the apprehension teams. This list of questions will be similar to the topics covered in the Interview Project. Following any interview, the investigators conducting the interview must provide the written results to the Anti-Terrorism Coordinator in the United States Attorney's Office, who will ensure that the information is entered into the Computerized Reporting System that was developed and used in the Interview Project.

Investigators conducting interviews should feel free to use all appropriate means of encouraging absconders to cooperate, including reference to any reward money that is being offered and reference to the availability of an "S Visa" under the Responsible Cooperators Program for alien informants. Investigators should fully explain these inducements, but should be careful not

to promise that they will be forthcoming in a particular case. Additional information about the Responsible Cooperators Program will be provided to the Anti-Terrorism Coordinators for further dissemination.

8. Custody of the Absconders

In those instances where an INS agent is not physically present at the time of an absconder's arrest, the INS should be contacted immediately by the arresting investigators, so that arrangements can be made to take the absconder into INS custody. When an absconder is taken into custody, he will usually be subject to prompt removal without further proceedings. In the ordinary case, the absconder will be held until the INS can complete the processing of travel documents, at which point he will be sent out of the country. If a particular absconder is to be the subject of further investigation or prosecution, the involved agencies will need to make quick decisions regarding the basis for continued custody of the absconder.

9. FBI Assessment of the Absconders

At the time that an absconder is taken into INS custody, the INS Coordinator must notify the FBI Coordinator of the arrest. Once notified, the FBI Coordinator must expeditiously review the absconder's case and the results of his interview and determine whether it appears that the absconder has any ties to or knowledge of terrorism that would justify further contact with the absconder by the FBI. In reaching this determination, the FBI Coordinator must be mindful of the INS' responsibility to remove absconders from this country in an expeditious fashion. Given that the INS might be working under a restrictive time frame, the FBI Coordinator will often have to base his or her determination on an oral report of the interview from the interviewing investigator and/or the INS Coordinator without the benefit of a written report. The FBI Coordinator will then determine if there is reason to investigate the absconder further. If so, he or she must immediately notify the INS Coordinator and the United States Attorney's Anti-Terrorism Coordinator of the FBI's desire to conduct further investigation prior to deportation.

10. Prosecution of the Absconders

At the time that an absconder is taken into INS custody, the INS Coordinator must also notify the Anti-Terrorism Coordinator of the arrest. The Anti-Terrorism Coordinator will then decide whether to proceed with a prosecution for Failure to Depart under 8 U.S.C. § 1253, or to forgo prosecution and allow the absconder to be deported by the INS. In deciding whether there is a law enforcement interest in pursuing a prosecution against a particular absconder, the United States Attorney's Office should consider whether the absconder has engaged in criminal conduct, aside from the immigration violation, during his stay in this country.

If the decision is to prosecute, the United States Attorney's Office will file charges and ensure that the absconder is presented before a federal magistrate. In those instances where the absconder was initially arrested on probable cause that he had violated 8 U.S.C. § 1253, he must

be taken before the nearest federal magistrate judge without unnecessary delay. In those instances where he was arrested by the INS on the civil warrant, the absconder need only be presented when and if criminal charges are filed. If the decision is not to prosecute, the absconder will be deported in accordance with standard INS procedures.

11. Deportation of the Absconders

Absent an affirmative notification from the Anti-Terrorism Coordinator or the FBI Coordinator of the desire to undertake further investigative or prosecutive action against the absconder, the INS will make every effort to remove the absconder from the country as quickly as possible.

12. Absconder Investigations Outside the Initial Investigating District

It will often become necessary to pursue leads for an absconder outside of the initial investigating district. As lead agency, it will be the responsibility of the INS to determine how best to conduct that investigation. In those instances where there are only isolated leads outside the district, or where the leads are in a nearby district, the INS Coordinator may determine that it is more efficient for the original apprehension team to pursue those leads. In those instances where the apprehension team determines that the absconder has moved to a distant district, the INS Coordinator would probably transfer the case to the INS Field Office in that district. In deciding whether to shift the investigation to another district, the INS Coordinator should always consult with and consider the views of the apprehension team members who are assigned to that investigation. Also, whenever the INS Coordinator decides to transfer an investigation to another district, he or she must communicate with INS headquarters, so that the fugitive folder may be re-assigned, and with the Anti-Terrorism Coordinator and the FBI Coordinator, so that they can alert their counterparts in the other district.

13. Tracking of Absconder Cases

The results of any interview with an absconder will be provided to the Anti-Terrorism Coordinator in each district, who will ensure that the results are entered into the Computerized Reporting System. The Anti-Terrorism Coordinator will provide the Executive Office for United States Attorneys regular reports on the number of absconders apprehended and interviewed in each district and the status of any prosecutions arising from this Initiative. In addition, the INS will be responsible for tracking each absconder's case following apprehension, and providing my office with regular reports on the number and timing of those removed under this Initiative.

C. Legal Issues

1. Authority of Law Enforcement Officers to Effect Arrests

There is no question about the legal authority of federal agents to participate in arresting these absconders, as the United States Code specifically authorizes agents of the FBI and deputies

of the USMS to make warrantless arrests for federal violations where probable cause exists. In many districts, however, I expect that state and local law enforcement members of the ATTF will also participate in this effort. Their legal authority is less clear, as some states and municipalities place certain restrictions on the extent to which their officers can be involved in enforcement of the immigration laws. The INS has researched this issue on a state-by-state basis, and the Director of the Executive Office of United States Attorneys (EOUSA) will arrange a conference call with the fifty State Attorneys General to discuss this issue. The INS research will be shared with the Anti-Terrorism Coordinator for each district.

2. Consular Notification

In connection with the arrest of these absconders, the United States has certain obligations under the Vienna Convention on Consular Relations (VCCR). Under the VCCR, every foreign national arrested or detained within the United States must be informed that consular officials of his/her country of nationality may be notified of the detention. If the foreign national "so requests," or if the detainee is a national of a "mandatory notification" country, the appropriate consular officials are entitled to be notified and to have access to their incarcerated nationals. The INS Coordinator in each district will be responsible for making consular notification, in accordance with existing INS guidelines.

D. Implementation Deadlines

This Initiative is to be implemented by taking the following steps within the designated deadlines:

1. The FTTTF will finalize the list of priority absconders on or before January 25, 2002.
2. The INS, the FBI and EOUSA will send to their offices in each district the initial list of priority absconders assigned to that district on or before January 28, 2002.
3. The Director of EOUSA, members of my staff and the Anti-Terrorism Coordinators will hold a conference call concerning the Initiative on January 29, 2002.
4. The Anti-Terrorism Coordinator and the INS and FBI Coordinators in each district will meet to discuss implementation of this Initiative in their district on or before January 31, 2002.
5. The INS Law Enforcement Support Center in Burlington, Vermont will have the first group of priority absconders entered into NCIC, and their fugitive folders will be distributed to the appropriate districts on or before February 1, 2002.

6. The Anti-Terrorism Coordinator and the INS and FBI Coordinators in each district will assign apprehension teams for all abductees on their list and distribute the fugitive folders and interview questions to those apprehension teams on or before February 11, 2002.



U.S. Department of Justice
Immigration and Naturalization Service

HQOPS 50/12.8

425 I Street NW
Washington, DC 20536

MAR -8 2002

MEMORANDUM FOR REGIONAL DIRECTORS

FROM:

(b)(6),(b)(7)(C)

Deputy Executive Associate Commissioner
Office of Detention and Removal

(b)(6),(b)(7)(C)

SUBJECT: National Fugitive Operations Program Implementation and Enhancement

This guidance supplements the memorandum issued by Michael A. Pearson, Executive Associate Commissioner, Office of Field Operations, relating to the National Fugitive Operations Program (NFOP).

Purpose:

This directive describes the distribution of forty law enforcement officer and support positions authorized and funded under the USA Patriot Act for the apprehension, processing and removal of fugitive aliens. It also provides initial policy guidance on the use of these positions.

Background:

In Mr. Pearson's memorandum, he directed Headquarters Detention and Removal Operations (HQDRO) to implement an NFOP. He further directed HQDRO to assume oversight for that program and to develop and issue a Standard Operating Procedure (SOP) for implementation at the national level. As stated in the memorandum, a successful and robust NFOP is a key component of the Immigration and Naturalization Service's (INS) contribution to the national security effort through the elimination of the fugitive case backlog and enhancement of our overall removal efforts. It must be one of the core fundamental enforcement activities of the INS.

In response to the terrorist attacks of September 11th, Congress passed landmark legislation in the form of the USA Patriot Act. The Act provided funding and positions for law enforcement agencies' roles in the war against terrorism.

As part of that legislation the INS, and specifically DRO, was authorized an enhancement of forty positions solely for the purpose of apprehending fugitive aliens. HQDRO has decided that these positions will be distributed to seven specific district offices as described below.

Discussion:

The DRO program bears the primary responsibility for locating, apprehending and removing aliens in the United States in violation of immigration law who are defined as fugitives. A detailed SOP for nationwide implementation of the NFOP will be issued at a later date. All existing policies and procedures relating to other aspects of INS operations specific to the detention and removal of aliens not specifically addressed by this directive remain in effect.

The HQDRO program is responsible for developing, implementing and monitoring the NFOP at the national level. Within HQDRO, the Removals Division is charged with implementing the program and providing effective guidance to the field. They will also create a mechanism to maintain data relative to fugitive operations.

Action:

The districts assigned the forty positions provided by the USA Patriot Act are New York, Newark, Miami, Detroit, Chicago, San Francisco, and Los Angeles. The following chart provides the breakdown of the positions that are available for each district and the apprehension targets for Fiscal Year 2003. These seven districts are to proceed with advertising and selecting officers to fill these positions as quickly as possible. The district directors receiving the initial enhancement positions are to utilize those positions solely for NFOP pursuant to congressional mandate. This requirement, however, does not prohibit them from utilizing additional DRO personnel to increase the effectiveness of their local operation. The seven districts receiving the enhancement positions shall create a Fugitive Operations Section (FOS) for the purpose of implementing the NFOP. The forty positions deployed under the USA Patriot Act enhancements should account for an additional 1,000 criminal fugitive apprehensions and removals over and above the Fiscal Year 2003 goal for criminal removals.

Districts receiving these positions should fill the new positions with existing qualified staff and then backfill the vacated positions. Fugitive operations require the most experienced and capable DRO personnel. Personnel who have had prior training and experience in fugitive operations activities and are at the journeyman level are the best fit for these initial assignments. For planning purposes, deportation officers should expect to remain in these positions for two to three years. This does not preclude the district from announcing the position Service-wide should insufficient qualified personnel be available locally. Backfill positions should be announced at the GS-11/12 level in order to alleviate the adverse impact on ongoing operations. In addition to the positions, HQDRO will provide vehicles for supervisory and deportation officer assigned under the enhancements to the seven initial districts. Additional funding will

also be provided for other necessary equipment such as computers, cellular telephones, pagers, etc. Vehicles and equipment provided under this enhancement shall not be used for any purpose other than the direct support of the NFOP.

National Fugitive Operations Program						
Deployment Districts	Teams Deployed	SDO, GS-13	DO, GS-11/12	DEO, GS-7/8	Deportation Assistant, GS-7	First Year Apprehension Targets*
NYC	2	1	6	1	2	250
NEW	1	1	3	0	1	125
MIA	1	1	3	0	1	125
DET	1	1	3	0	1	125
CHI	1	1	3	0	1	125
SFR	1	1	3	0	1	125
LOS	1	1	3	0	1	125
TOTALS	8	7	24	1	8	1,000

* Criminal alien fugitives.

HQDRO has requested a new program element for Fugitive Operations. Once approved and implemented, this new program element will be used for Fugitive Operations activities including designation in POSTS, payroll, overtime, awards, other-than permanent positions and general expenses. Specific guidance will be provided once the new program element has been approved.

Regional offices are to task an existing deputy assistant regional director for DRO to act as an intermediary between the HQDRO and district fugitive operations personnel as a collateral duty. This intermediary shall coordinate all reporting and operational issues within their areas of responsibility and provide oversight consistent with current operational structure.

To accomplish the 10-year objective of eliminating the backlog of fugitive cases HQDRO has identified the priority in which fugitives should be targeted and are listed below. Fugitive aliens should be targeted for location and apprehension in the following order:

Priority I:

- Backlog criminal alien cases; (approximately 40,000 cases)
- From countries to which they can be expeditiously removed; and,
- A-Files currently located at the field offices.

Priority II:

- Backlog criminal alien cases; (approximately 40,000 cases)
- From countries to which they can be expeditiously removed; and,

- A-Files located at the National Record Center.

Priority III:

- Non-criminal backlog cases; (approximately 234,000)
- From countries to which they can be expeditiously removed; and,
- Cases on Orders of Supervision that are now removable.

Though districts should manage their enhancement resources to address these priorities, all targets of opportunity as well as new fugitive cases should be addressed as needed.

HQDRO will develop lists of Priority I fugitive cases for dissemination to the field based on information available through the Deportable Alien Control System (DACS). A-Files relating to these cases should be located at the district offices as soon as practical. Field offices should immediately assign and begin working to locate, apprehend and remove these cases.

All A-Files that cannot be located for whatever reason should be reported immediately to HQDRO Removal Operations Division which will initiate a Service wide search for them. Once located, they will be immediately forwarded to the appropriate field office for assignment.

The seven district offices receiving enhancement positions shall monitor all work conducted by their new fugitive teams to ensure that priority is given to the pursuit of cases that will ultimately lead to apprehension and removal.

While district offices not receiving enhancement positions are not required to designate DRO personnel solely to fugitive operations, they are expected to implement an effective and vigorous fugitive program within their respective jurisdictions consistent with those efforts of the districts receiving initial enhancements. Specific field guidance for nationwide implementation of the NFOP in the form of an SOP is currently being developed by HQDRO and will be forthcoming. This SOP will draw on the best practices from the field such as the recently promulgated *Western Region Fugitive Alien Apprehension Operations Guidance*.

Questions or concerns regarding to this memorandum may be directed to (b)(6),(b)(7)(C) or (b)(6),(b)(7)(C) in HQDRO Removal Operations Division via cc:mail or at (202) 305-(b)(6),(b)(7)(C)

cc: District Directors
Office of Field Operations



HQOPS 50/12.8

Office of the Executive Associate Commissioner

425 I Street NW
Washington, DC 20536

AUG 29 2002

MEMORANDUM FOR: Distribution

FROM: Johnny N. Williams
Executive Associate
Commissioner
Office of Field Operations

SUBJECT: Absconder Apprehension Initiative Standard Operating Procedure (SOP)
for National Crime Information Center (NCIC) Wanted Persons File

Changes in the handling of Immigration and Naturalization Service (INS) entries into the NCIC Wanted Persons File are necessitated by the significant increase in the number of cases to be entered in support of Phase Two of the Absconder Apprehension Initiative (AAI-2) as described in a previous memorandum dated April 18, 2002. The AAI-2 involves the review of hundreds of thousands of files relating to aliens who have unexecuted warrants of deportation/removal outstanding. Those files have been grouped by priority beginning with 18,000 criminals. Additionally, new absconder cases will continue to be prepared and forwarded to the Law Enforcement Support Center (LESC) for entry into the NCIC throughout the life of the initiative.

Detailed instructions, in the form of an SOP, are attached. The following are fundamental elements from the SOP that must exist to support an entry into the NCIC Wanted Persons File at this time:

1. The alien has a final order of deportation or removal and a warrant of deportation or warrant of removal is present in the file. The requisite final order of deportation or removal may include deportation or removal orders issued by immigration judges, administrative removal orders, expedited removal orders, and reinstated deportation or removal orders so long as one of the charges that is the basis for the removal order was under section 237(a) of the Immigration Nationality Act, or section 241(a) prior to enactment of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (DRIRA). The I-205 (Warrant of Removal) must be prepared in each case prior to NCIC entry. For all cases from this date forward, the field office will prepare the I-205 for each of the above-listed categories prior to submission to the LESL.

Subject: Absconder Apprehension Initiative

National Crime Information Center (NCIC) Wanted Persons File

2. The file contains material sufficient to enable the LESC to readily assist the law enforcement officer who receives a name-based NCIC "hit" to establish whether the individual encountered is indeed the alien absconder subject of the NCIC entry. At present, Service policy requires that the file contain a full set of fingerprints, identifiable photograph, and biographic/biometric data found on forms such as the I-213, I-217, or G-325A.
3. The A-file and all record checks do not provide any reason to believe that there are impediments to the alien's removal based on matters pending before the INS, the Executive Office for Immigration Review (EOIR) or the federal courts.

Because of the potential for criminal prosecution under section 243(a)(1) of the Immigration and Nationality Act, all case files must be handled as if they were evidence in a criminal prosecution. Files will be complete and kept in order pursuant to the INS Records Operations Handbook. The arresting officer will ensure, prior to releasing any alien on bond, an Order of Recognizance or placement into INS detention, that the following steps are completed:

1. All aliens placed in proceedings will be fingerprinted on form FD-249 (minimum 2 classifiable copies).
2. Multiple sets of clear photographs will be taken, preferably in a digital format that can be reproduced in various sizes.
3. All biographical data and supporting documentation (I-213, I-217, etc.) are completed.

These requirements reiterate the case processing procedures found in the Interim Enforcement Procedures released on Inserts on June 5, 1997.

Additionally, new regulations on advising aliens in proceedings of their responsibility to surrender for removal upon receipt of a final order are pending. Until those regulations go into effect, field offices should continue to create and send via certified mail, return receipt requested, a Notice to Surrender, Form I-166, instructing the alien to report for removal. Field offices may wish to delay this notification until after their officers have had the opportunity to locate the individual first so as not to alert the subject to our intention to arrest and remove them.

The increase of entries into the NCIC Wanted Persons File is intended to enhance the ability of the national law enforcement community to identify aliens who have remained within our borders without authorization. The review process being undertaken by the LESC and the Headquarters, Office of Detention and Removal, Resolution Unit, is designed to capture all relevant information on an alien's status before entry into NCIC and to minimize the likelihood of detaining any alien who is in lawful status or otherwise not subject to removal.

Subject: Absconder Apprehension Initiative

National Crime Information Center (NCIC) Wanted Persons File

When field offices receive calls from the LESC regarding positive “hit” confirmations, they must respond promptly to the law enforcement agency that located the subject of the INS “hit.” Once the INS has assumed custody, the responsible officer is expected to exercise sound judgment in handling each case based on the available documentation and interviews with the subject of the NCIC entry. Additionally, the responsible officer must notify the LESC of the subject’s custody to ensure immediate removal of the NCIC entry.

All DRO field operations regarding the location and apprehension of cases within the scope of AAI-2 will be governed by the National Fugitive Operations Program (NFOP) SOP issued by Headquarters, Office of Detention and Removal.

A copy of the attached SOP, as well as the NFOP SOP, will be posted on the HQDRO Fugitive Operations bulletin board upon its activation. HQDRO will notify the field of updates to the SOPs through cc: Mail announcements. Questions regarding the instructions in this memorandum and the accompanying SOP may be directed to (b)(6),(b)(7)(C) Director of Removals, at (202) 616-(b)(6),(b)(7)(C).

Attachment

Subject: Absconder Apprehension Initiative

National Crime Information Center (NCIC) Wanted Persons File

DISTRIBUTION:

REGIONAL DIRECTORS

DEPUTY EXECUTIVE ASSOCIATE COMMISSIONER, ENFORCEMENT

**DEPUTY EXECUTIVE ASSOCIATE COMMISSIONER, OFFICE OF DETENTION AND
REMOVAL**

CHIEF, U.S. BORDER PATROL

cc: Director, Law Enforcement Support Center
Office of General Counsel

Absconder Apprehension Initiative

Phase Two

STANDARD OPERATING PROCEDURE

Headquarters
Office of Detention and Removal
Washington, D.C.
August 2002

Table of Contents

INTRODUCTION	II
I. Stage I Cases: Identification and Call for Files.....	1
A. Identification of Files	1
B. Records Action - Generation of “Pull Tickets”	1
C. Advance Notifications.....	3
D. Call for Files - General Exemptions and Special Requests to Keep Files.....	3
E. Request for Files by Field Offices.....	5
II. GENERATION & PROCESSING OF STAGE II CASES AND INTERFILING.....	6
A. Identification and Submission of Stage II Cases to the LESC	6
B. Preparation of Stage II Cases for Submission to LESC	6
C. Interfiling of Documents	8
III. SHIPMENT OF FILES (STAGE I AND STAGE II)	8
A. Preparation of Files for Shipment	8
B. Records Responsibility Prior to Shipping Files.....	8
C. Method of Shipment, and Tracking.....	9
D. Timeliness	9
IV. PROCESSING FILES AT THE LESC	9
A. Receipt of Files at LESC.....	9
B. Review of A-files for eligibility	10
C. Checks of INS Databases	10
D. Entry of Eligible Cases.....	10
E. Transfer Ineligible Cases to the RU	10
V. INTERNAL PROCESSES AT RU.....	11
A. Receipt of Files at RU	11
B. Correction of Ineligibilities	12
C. Closing a File	13
D. When to Send Ineligible A-file to the Field	13
E. When to Send Ineligible A-file Back to LESC	13
VI. STATISTICS KEPT BY THE RESOLUTION UNIT	14
A. Purpose.....	14
B. Data, and Means of Capture.....	14
VII. DEFINITIONS/LIST OF ACRONYMS.....	18

INTRODUCTION

The Immigration & Naturalization Service (INS) has embarked on a new two phased initiative, the Absconder Apprehension Initiative (AAI), designed to track down and remove every alien with unexecuted final orders of removal, termed absconders. Phase One (AAI-1), led by the Office of Investigations (HQINV), is aimed at locating and removing a relatively small set of absconders who have been identified based on certain characteristics. Phase Two (AAI-2), led by the Office of Detention and Removal (HQDRO), is focused on locating and removing all other existing absconders and ensuring that, in the future, absconders are located and removed on an ongoing basis so that a backlog will not develop.

A crucial component to the effectiveness of AAI is the entry of eligible cases into the National Crime Information Center (NCIC). This will greatly increase the INS' ability to locate and apprehend absconders nationwide when state and local law enforcement officers encounter the subjects of the NCIC entries and contact the INS. In order to simplify this process, absconder files in Phase Two have been separated into two stages, the submission of which to the Law Enforcement Support Center (LESC) will be governed by different policies. These two stages are distinguished by the date of final order - aliens with final orders dated prior to January 28, 2002 are considered Stage I, while aliens with final orders dated on or after that date are considered Stage II.

This document focuses on the procedures for identifying, preparing and entering targeted files from Stages I and II of AAI into the NCIC. As set forth in this document, Detention and Removal, Investigations, Records and the LESC will play a crucial role in ensuring that files are properly entered and maintained in NCIC. These procedures may be modified in the future.

The guidance developed for AAI-1 cases in the memorandum of the Executive Associate Commissioner, Office of Field Operations, dated January 28, 2002, is still in effect. . Investigations and Detention and Removal officers assigned to AAI-1 locate investigations are to comply with all requirements of the above referenced memorandum.

I. Stage I Cases: Identification and Call for Files

A. Identification of Files

Stage I cases, those with final but unexecuted orders of removal dated prior to January 28, 2002, were identified by matching data found in the Deportable Alien Control System (DACS) and the Executive Office for Immigration Review (EOIR) database. This population was then adjusted to take out aliens: currently incarcerated by other law enforcement agencies (LEAs); detained by INS; eligible for Temporary Protected Status (TPS) or other protection; who have been naturalized or had their status adjusted; or from countries to which repatriation is considered most difficult.

The remaining population was divided into categories based on perceived threat to the public safety. They have been prioritized for entry into NCIC according to the following precedence:

1. Criminal Absconders
2. Non-Criminal Absconders
3. Aliens with unverified orders of voluntary departure

NOTE: File requests will only go out for Stage I cases. Stage II cases are identified and submitted to LESC by the field as they develop. This is explained more fully in Section II.

B. Records Action - Generation of "Pull Tickets"

Based on the system for identification and priority categories outlined above, the Absconder Apprehension Initiative Coordinator (AAIC), located at INS Headquarters, will periodically provide lists of Stage I absconder A-files to the Headquarters Office of Records Services (HQORS), with a copy to the National Records Center (NRC), to trigger the process for requesting these files for entry into NCIC. Large file calls may be subdivided for ease of transfer and tracking.

Once HQORS receives the list, it will utilize the A-numbers to perform a batch file request in the Central Index System (CIS). The absconder file requests will be identified in CIS by a specified person/action code beginning with the letters ZABSCN (*ZABSCN2, ZABSCN3, etc.*), selected and placed in CIS by HQORS. The code will be provided to the field in the advance notification described in Section C below. The CIS and Receipt and Alien File Accountability System (RAFACS) or the National File Tracking System (NFTS) interface will generate the Pull Ticket Report at each field office.

In order to ensure timely submission of identified files into NCIC, **it is imperative that each field office print the pull ticket report and perform the download and upload to the CIS daily.**

All AAI requests (*identified by the code ZABSCN*) **must be treated as expedited requests**, and processed according to the guidelines in the Records Operations Handbook (ROH).

Whenever a list is sent for call up, HQORS will provide a summary report to the regions, HQDRO, and the LESC with the following information:

- Total A-files requested.
- Files requested that were not found in CIS. (This will occur if there is a disparity between DACS and CIS such as, the case was created in DACS but the file was never created in CIS, or an erroneous number was entered in DACS.)
- Files requested with no current Files Control Office (FCO) shown in CIS.
- Duplicate requests (A-number listed more than once).
- Records requested that exist as duplicate files (as when multiple A numbers are assigned or A-files are created under aliases).
- Location and CIS transfer status of files before and after batch request.
- Files requested which are already at the LESC. (*No pull tickets generated for these files.*)

- A list of files for which CIS rejected the request due to file being in transfer status. *(No pull tickets generated for these files.)*

All sites should notify their regional office if they do not receive the expected number of requests and the Help Desk if they have problems printing the pull tickets.

C. Advance Notifications

HQORS will provide advance notification to the Regions, Service Centers, and NRC of all impending requests for ZABSCN coded absconder files. HQORS will inform these offices during a weekly HQORS conference call if a new list is forthcoming, how many files are expected to be in the batch request, the specified person/action code, and the approximate date they can expect the file requests.

Many of the A-files being called for will be located in various operational units in the field, such as Investigations, Detention and Removal Operations (DRO), and Adjudications. Those entities may wish to expedite action, or copy files they will have to submit. To give them lead-time to prepare, HQDRO will notify district directors and other field managers by e-mail of impending file requests. The notification will advise them of the type of files being requested, but not the specific A-numbers. Those officers should then distribute the notification to their subordinates for their information and action.

D. Call for Files - General Exemptions and Special Requests to Keep Files

Every A-file requested through CIS pursuant to the AAI and coded ZABSCN **shall be forwarded immediately** to the LESC unless it falls within one of the following categories:

- | | |
|---|---|
| <div style="border: 1px solid black; width: 60px; height: 100px; position: relative;"> (b)(7)(E) </div> | — Subject is currently in INS custody. |
| | — Subject is detained or incarcerated by another LEA, and INS has lodged a detainer. |
| | — Subject no longer has an outstanding warrant of deportation or removal, or, subsequent to the warrant being issued, he has lawfully received legal status from INS. |

(b)(7)(E)

- Subject is eligible for TPS or has been granted Deferred Enforced Departure (DED), or some other statutory, judicial, or discretionary relief from removal.
- Subject's whereabouts are definitely known to INS and entry into NCIC as a wanted person would either be inappropriate or detrimental to INS operations.
- Requested A-file has already been consolidated into another A-file.
- Subject is deceased and there is an official death certificate in the file.
- Any other A-file that does not fall into one of the general exemptions covered in E1 through E7 but, for some reason, the field office believes that the file should be exempted. In such cases, the field must contact the Resolution Unit (RU) supervisor at **(802) 872- 6020, ext. 6078**, in order to discuss the request to retain the file in the field. *(RU supervisor's approval required)*

Examples of an alien in category E5 would be one who is regularly reporting under an Order of Supervision, or who is the subject of an active criminal investigation or effort to locate and whose whereabouts are known, or whose case has been reopened in immigration court, or who is scheduled for an imminent benefit that will make the warrant inappropriate.

These exemptions do not grant a field office unilateral authority not to forward AAI "ZABSCN" coded files to LESC. If an office believes that a requested file falls under one of the exemptions listed above, the Assistant District Director (ADD) or supervisor in charge of the program shall forward an e-mail message to the RU at **"AAIDRO."** The e-mail must indicate the file number of the case believed to be exempt, the applicable exemption number (*E1 – E7*), as well as the contact telephone number of the individual making the request. The RU will contact the field on cases for which it determines that additional information is necessary. The RU will provide an answer by e-mail to the field as expeditiously as possible on those cases requiring additional information.

NOTE: Despite the elements listed above (E1 – E7) making a case exempt, an officer may request NCIC entry of such a case if he articulates in writing specific circumstances leading him to believe that though normally exempt, the alien is a threat to the community. The justification memorandum will be addressed to the Director of the LESC and forwarded with the A-file to the LESC.

By close of business Tuesday of each week, the RU will send to HQORS a list of files it has authorized to remain in the field as exempted files. HQORS will remove these files from the ZABSCN pull request. HQORS will change the person/action code in CIS from ZABSCN to ZA2_NS.

E. Request for Files by Field Offices

Field offices should not request files from the LESC when contemplating or planning an enforcement action that may result in the arrest of an absconder alien. Officers may call the LESC if additional information is needed from the file to locate and apprehend the targets of investigations. Original A-files should not be requested except under extraordinary circumstances or if the alien is in custody.

File requests for aliens not in custody should be sent to the Director, LESC by a district director or officer-in-charge with a memo explaining the extraordinary circumstances precipitating the request. The LESC will immediately remove from NCIC the entries supported by files returned to the field.

Once an alien associated with AAI is in custody, field offices shall notify the LESC and request the A-file. Upon notification, the LESC will remove the NCIC entry and forward the file to the requesting office.

II. GENERATION & PROCESSING OF STAGE II CASES AND INTERFILING

Stage II AAI cases are those with a final order of deportation or of removal dated on or after January 28, 2002.

A. *Identification and Submission of Stage II Cases to the LESC*

In order to avoid an increase in the backlog of AAI cases, district DRO officers shall attempt to locate and apprehend all aliens for whom a final order is received. If field units are unsuccessful in locating and apprehending the alien within 120 days of the date of the final order, the alien will be considered an absconder and the case will be sent to the LESC for NCIC entry in accordance with the procedures below. *Supervisors are reminded that the entry of a case into NCIC does not preclude officers from continuing attempts to locate the fugitive.*

A-files should be shipped to the LESC as soon as 120 days have elapsed from the date of the final order. However, A-files may be held for up to a week for batch shipment. Other extension requests will be considered on a case-by-case basis by the AAIC. For such cases, the ADD in charge of the program requesting the extension will prepare a memorandum to the AAIC setting forth the reasons for the request and specify a length of time required for the extension. An extension will only be granted by the AAIC for those cases in which the location and apprehension of the absconder is imminent. "Imminent" is to be interpreted as two weeks or less.

B. *Preparation of Stage II Cases for Submission to LESC*

The DRO supervisor shall conduct a review of the file and perform each of the following tasks prior to shipment of files to the LESC:

- Ensure A-files and temporary files are complete and have the required documents for NCIC entry (see definition for NCIC Eligible Case, Section VII). All A-files and temporary files relating to the same subject will be consolidated and related system updates made prior to submission to the LESC.

- Documents supporting NCIC entry should be found in the file. The originals of those documents should be pulled and clamped together on the top of the right side of the file. Copies of each document should be inserted as a placeholder at its original location in the file to maintain continuity of the construction of the file.
- I-205 (file should contain the most recent I-205). Make certain that the I-205 is complete with signatures and all other data.
- Forms containing biometric/biographic data (e.g., I-213s, I-217s, G-325A).
- Identifiable photograph. (It must be recent enough to form a basis for visual identification.)
- Ten-print fingerprint card.
- Verify that all material in the file relates to the subject.
- Review fingerprint cards for completeness, including biographic/biometric data, and statute citation and description (e.g., 8 USC 1326, Reentry After Deportation).
- Superfluous material, such as multiple copies of applications, should be purged from the file.
- A-files shall be made whole at the field location prior to shipment to LESC. The reviewing supervisor will take steps to obtain any missing documents to ensure that all files submitted to the LESC are eligible for input into NCIC. In cases where a Stage II case does not have photos or fingerprints and they are unobtainable, the file will be sent to the LESC for use in Immigration Alien Query (IAQ) checks. The field office should, however, continue to pursue the apprehension of the subject.
- Supervisors shall ensure that DACS, CIS and RAFACS are updated and complete.

If field units wish to continue to work the case after submission of the A-file to the LESC, they should copy any pertinent material they desire prior to shipment.

C. Interfiling of Documents

Offices that receive mail pertinent to a case file must ensure that the mail is forwarded to the A-file at the LESC for inclusion. Likewise, any information developed regarding the attempt to locate or positively identify the alien must also be forwarded to the LESC for inclusion in the A-file. It is imperative that the A-file have all the up to date information possible to make positive confirmation of identity for a law enforcement officer who may encounter the subject, as well as any information that may impact on the status of the subject.

III. SHIPMENT OF FILES (STAGE I AND STAGE II)

All Stage I and Stage II files will be shipped to LESC through the local records office so that the files can be transferred out in accordance with procedures.

A. Preparation of Files for Shipment

All files shipped to LESC should be in good order prior to shipment. At a minimum, ORS will ensure the following:

- Consolidation of temporary files into the original A-file.
- Consolidation of multiple files relating to a single individual.
- Replacement of missing bar code labels.
- Repair or replacement of damaged jackets.
- Securing loose paperwork with fasteners or clamps.

B. Records Responsibility Prior to Shipping Files

Prior to shipping the A-files to the LESC, the local records office shall take the following steps:

- Perform file maintenance and rehabilitation as necessary.

- Update CIS/RAFACS or NFTS according to Records Operations Handbook (ROH) guidelines.
- ORS will track A-files for statistical purposes in the following categories:
 - AAI Phase One Cases (Recognizable by the ZZABSCN code in person/action field).
 - AAI Phase Two, Stage I cases (Recognizable by ZABSCN2, 3, etc., codes).
- Ensure that each package of A-files is secured and properly addressed. Files should be shipped to:

LESC
188 Harvest Lane
Williston, VT 05495
(802) 872-(b)(6),(b)(7)(C)

C. Method of Shipment, and Tracking

Offices that currently have an account with United Parcel Service (UPS) should use UPS for large file movements. Smaller offices or offices without an UPS account shall use FedEx. In all instances, shipments shall have an ancillary tracking mechanism.

D. Timeliness

Stage I files must be shipped, or exemptions requested, within 15 days of receipt of the A-file pull request.

Stage II cases must be shipped 90 days after a final order if the alien has not been apprehended unless an exemption has been approved.

IV. PROCESSING FILES AT THE LESC

A. Receipt of Files at LESC

- LESC will receive files in accordance with ROH instructions.
- Returned cases should be sent immediately to the RU for their action, and must not be counted as cases received. (These are cases that were sent to the field by RU for

resolution and are arriving back at LESC. They will be recognizable by the code ZA2_REV.)

- LESC will count A-files, for statistical purposes, cases that are reviewed by the LESC and those forwarded to the RU in the following categories: (These statistics will be forwarded to the AAIC daily.)
 - AAI Phase One Cases (Recognizable by the ZZABSCN code in person/action field).
 - AAI Phase Two, Stage I cases (Recognizable by ZABSCN2, 3, etc., codes).

B. Review of A-files for eligibility

All files will be reviewed by the LESC to determine eligibility for entry into NCIC. This review will include documentary eligibility as well as legal eligibility. LESC will apply its standard criteria for entry into NCIC.

C. Checks of INS Databases

For every file received, the LESC will run ENS databases for the A-number. They will determine if there are unconsolidated files or other legal issues such as applications pending, TPS eligibility, or any of the other statutory, judicial, or discretionary relief from removal (e.g., LULAC, CSS, NACARA) which would render the file ineligible for entry into NCIC as part of the AAI initiative.

D. Entry of Eligible Cases

Upon entry of a case into NCIC, responsibility for maintenance of that file and the NCIC entry resides with the LESC. That includes confirmation of hits, annual revalidations of the warrant, etc.

E. Transfer Ineligible Cases to the RU

The LESC will refer A-files to the RU upon discovery of any disqualifying ground. The LESC will not attempt to identify every ground for ineligibility, but will refer the case to the RU for complete review.

V. INTERNAL PROCESSES AT RU

The purpose of the RU is to review cases that do not meet criteria for NCIC entry, and to either fix the file so that it is NCIC eligible, or determine that the file cannot be fixed and made eligible for entry into the NCIC. The RU may transfer files to the field to be fixed.

Files that the RU determines cannot be made eligible for entry into NCIC will be closed for NCIC purposes (*Subsection C, below*). If the files contain no proper warrant they will be forwarded to the NRC (*Subsection D, below*), or back to the field if the file contains leads to the subject's whereabouts (*Subsection E, below*). If they contain a proper warrant but are otherwise ineligible for entry and the problem cannot be fixed, they will be sent back to the LESC (*Section F, below*).

A. Receipt of Files at RU

The RU will receive files in accordance with instructions in the ROH, and will track files for statistical purposes as described in Section VI, Statistics.

Once a file has been referred to the RU, the RU will check DACS and CIS to confirm that those systems are up to date and accurately reflect the alien's status in the United States, location, and case code.

Three person/action codes have been established in CIS to enable the RU to track cases.

- **ZZANEW** (note use of underscore as final character) Indicates a file with a final order dated on or after January 28, 2002 being submitted to LESC for entry into NCIC. These cases originate in the field continuously. They are not sent in response to a call from HQORS. The code is entered in CIS by ORS at the sending office.
- **ZA2_REV** (note use of underscore as fourth character) Indicates a file that has been sent back to the field by the RU to be fixed. The RU will enter the code when a case is transferred back to the field.
- **ZA2CLOS** Indicates a file that has been closed by the RU for NCIC entry purposes. The file may still be active for other purposes such as investigation of leads. Closed files may be sent to the NRC, the LESC for other than entry purposes, or to the field

to be worked there. Records personnel assigned to the RU will make the change when required.

B. Correction of Ineligibilities

The RU will identify all factors that make a case NCIC ineligible. For the respective ineligibilities identified, RU personnel shall take the following actions:

- **Missing Properly Issued Warrant of Deportation or Removal (I-205)** - File will be transferred back to originating district for preparation of warrant and signature.
- **Missing Final Order from Immigration Judge or Board of Immigration Appeals-**
The RU shall contact the respective EOIR jurisdiction to obtain a copy of the final removal order.
- **Missing Fingerprint Card** - If subject has a criminal history, RU shall contact the FBI to obtain a copy. If unavailable from the FBI, RU shall pursue other avenues, such as Forensic Document Lab, or Alien Fingerprint Identification System..
- **Missing Photograph** - The file may be returned to the field office with a suggestion that they obtain one from other government sources, such as driver's license bureaus, unless the field is able to locate a photo without the file.
- **Missing I-213, I-217, G-325A, or Other Sources of Biographic/Biometric Data** - If insufficient data is available to allow for positive identification of the subject, the file will be transferred back to the district having jurisdiction over the last known address.
- **Lacks Amenability to Prosecution** - If this does not exist, the RU will determine, by file review, if the case can be made eligible for prosecution and will take the steps necessary to complete the file. (See case category charts under the definition for NCIC Eligible Cases.)
- **Appeal Pending** - Check with EOIR, the federal court clerks or the INS District Counsel's office to determine the status of appeal. If it is determined that an appeal is still active the case will be returned to the district with jurisdiction.

- **Unconsolidated A-files** - The RU shall request all other A-files and temporary files and consolidate them. It will then review the complete record to determine eligibility for entry into NCIC.
- **Subsequent to the Order of Deportation or Removal, Alien was Granted Legal Status** - The RU will review the A-file to determine if investigative action is appropriate. If so, it will forward the file to the field as an investigative lead.
- **Alien is Eligible for TPS, or any Judicial, Statutory, or Discretionary Relief from, or Deferrals of Removal (LULAC, CSS, NACARA, etc).**
- §

C. Closing a File

If the RU is unable to make a file eligible for entry into NCIC, it will close the file for NCIC purposes. The RU will place its standard record of review worksheet into the file indicating that it has been considered for entry, found lacking, and the deficiency was uncorrectable. As described below in subsections D, E, and F, the file will be sent from the RU to either the NRC, back to the field, or to the LESC. By close of business of Tuesday each week, the RU will provide to HQORS a list of files it has closed. *(That list will accompany the list of files approved by the AAIC to be retained in the field, described in Section I-D of this SOP.)* Records personnel at the RU will change the CIS person/action code for those files to ZZACLOS.

D. When to Send Ineligible A-file to the Field

If the RU determines that a file cannot be made eligible for entry into NCIC, but deems that further investigative action may result in apprehension of the subject, it will be closed for NCIC purposes and forwarded to the appropriate district office as an investigative lead. *(This process is distinct from that when the file is transferred out to the field to address one of the deficiencies outlined in Subsection B, above.)*

E. When to Send Ineligible A-file Back to LESC

The RU will return an A-file to the LESC if it contains a proper warrant, but the RU is unable to correct some other ground of ineligibility for entry into the NCIC. The LESC will not enter the warrant into the NCIC, but will keep that file on its shelves. This will enable the LESC to provide a prompt, comprehensive response to LEAs that make a general request for alien information, or an IAQ, through the National Law Enforcement Telecommunications System (NLETS), or by phone call. By having the file at hand, the LESC can inform the LEA that a warrant exists for the alien's arrest although that warrant is not in the NCIC.

VI. STATISTICS KEPT BY THE RESOLUTION UNIT

A. *Purpose*

The statistics kept by the RU will serve three purposes.

- To track the productivity of the RU.
- To track the RU workload.
- To track other factors in the process.

B. *Data, and Means of Capture*

The headings below are keyed to the lines on the RU's statistical tracking sheet.

- A. RU Production - Measure of the actual input/output from the RU.**
 - 1. Files Received from LESC** - This number is taken straight from the LESC report. The RU does not actually count the files they receive from LESC.
 - 2. Cases Resolved by RU** - Files fixed by the RU and returned to LESC for consideration.

3. **Files Closed Immediately by RU** - These files are those in which there is an irresolvable problem. The file is closed only for NCIC purposes. The file may be returned to the field if it contains promising leads. Otherwise, it is sent to the LESC or NRC (*see Sections V – D & E above*).
 4. **Files Transferred Out to Field for Resolution** - These cases are tracked on an individual basis as to A-number and field office, to assure that each case sent out is finally received back.
 5. **Files Received from Field after Resolution Attempt** - These files are tracked against the record of those files sent out for resolution.
 - (a) **Resolved by Field** - These cases have been fixed and will be sent to LESC.
 - (b) **Unresolved by Field** - These cases will be closed for NCIC purposes and sent to the NRC.
 6. **Total Files Closed** - Sum of files closed (*for NCIC purposes*) by RU immediately, plus those returned by the field, which cannot be resolved.
 7. **Files Returned to LESC for Consideration** - Sum of files resolved by the RU plus those returned from the field that have been resolved.
 8. **Cases Pending with Resolution Unit** - Number of cases received from the LESC minus the total of those closed plus those returned to LESC resolved.
- B. RU Workload** - The workload is substantially higher than can be inferred from the production statistics. This is because each file must be reviewed multiple times during the resolution process. The subheadings reflect each common reason for review. They also reflect the most common problems found in files coming from the field.

1. Total File Reviews - Sum of numbers for (a) through (g).

(a) Not amenable to prosecution. *(See case category charts under the definition for NCIC Eligible Cases.)*

(b) No properly issued I-205.

(c) No fingerprints or photograph.

(d) DACS requires update - Cases will not be entered if DACS is not current.

(e) Files pending consolidation - Review has revealed the existence of another file that may contain material making entry of the warrant inappropriate.

(f) Files to be shipped out of RU - These are files being sent to the NRC or back to the field to be worked. They receive a final review to determine the appropriate destination.

(g) Files returned to RU by LESC for reconsideration - These files received a final supervisory review before being resubmitted to the LESC.

C. Other Factors - These numbers stand alone in this category. They do not tie into or balance with anything reported above.

1. Cases Referred to DRO Field Operations for Apprehension before NCIC Entry, but Files Not Closed - These are also referred to as “hot lead” cases. These are cases where, during review, leads are found that appear likely to result in apprehension of the subject if worked immediately. To send a surrender notice to the alien as required prior to NCIC entry might result in his flight, so these cases are sent back to the field to be worked before NCIC entry. If no apprehension results, they are returned to the RU for resolution

and resubmission to the LESC. They are tracked on an individual basis with a call-up.

2. RU-Assisted Apprehensions

- a) **RU found subject incarcerated and detainer lodged** - File closed without NCIC entry, and sent to office having jurisdiction over the institution.
- b) **RU found lead to fugitive resulting in apprehension** - File closed without NCIC entry and sent back to field for consideration of investigation of leads, and apprehension resulted. *(These are distinct from the "hot lead" cases explained at #1 above in this section.)*

3. Unresolvable, but contain leads - Cases are closed and returned to field. *(List of such cases kept and tracked against DACS after 30 days to see which referrals resulted in apprehensions. Process generates figure found in 2.b above).*

4. Unresolvable and no leads found - Returned to LESC shelf.

VII. DEFINITIONS/LIST OF ACRONYMS

- **AAI** – Absconder Apprehension Initiative.
- **AAI-1** – Absconder Apprehension Initiative, Phase One, relates to the A-files of a group of approximately 6,000 Middle Eastern men who have unexecuted warrants of deportation. Those were the first set of files identified and called for in response the Sept. 11, 2001 attack.
- **AAI-2** – Files relating to a general population of aliens having unexecuted warrants of deportation. AAI-2 is broken down into Stage I and Stage II cases. See definitions below.
- **AAI Coordinator (AAIC)** – The Headquarters single point of contact for all AAI issues. Presently, the AAIC is an officer detailed in from the field to work directly for the Executive Associate Commissioner for Operations. In the future the Coordinator will be an officer from Headquarters, Detention and Removal Operations (HQDRO) overseeing those duties under the guidance of the Director of Removal Operations.
- **AAI Codes in Central Index System (CIS)**

These codes will appear in the person/action field of CIS to identify files being handled under AAI.

- **ZABSCN*** A digit will appear in place of the asterisk. That digit is a number indicating the file's sequence within the AAI calls for files.
- **ZA2_NS** Files approved by the RU for the field to "NOT Send" to the LESC for entry into NCIC (*Note use of underscore as 4th character*).
- **ZA2_REV** Indicates a file that has been sent back to the field by the RU for reconciliation (*Note use of underscore as 4th character*).
- **ZZACLOS** Indicates a file that has been closed by the RU for NCIC entry purposes.
- **ZZANew** Indicates a Stage II AAI file being submitted to LESC for entry into NCIC. These cases originate in the field continuously. They are *not* sent in response to a call from HQORS (*Note use of underscore as final character*).

- **Absconder** - An alien who has been ordered deported or removed whose whereabouts are unknown to INS. (For the purposes of the file pull designation, an absconder is differentiated in DACS by the designation 5b, 8e and 8i.)
- **ADD/DRO** - For the purposes of this SOP, this term includes both the current Assistant District Directors for Detention and Removal, and the new Directors for Detention and Removal Field Operations as identified in reorganization structure.
- **Closed** - For purposes of this SOP, “closed” means that the RU has determined that a file found by the LESC to be ineligible for entry into NCIC cannot be corrected to make it eligible. However, the file may still be active for other purposes, such as investigation of leads. RU personnel will update the CIS person/action field with the code ZA2CLOS when a file is closed. Closed files may be sent to the NRC, the LESC for other than entry purposes, or to the field to be worked there.
- **HQDRO** - Headquarters Office of Detention and Removal Operations.
- **HQORS** - Headquarters Office of Record Services.
- **IAQ** - Immigration Alien Query. A request to the LESC by LEAs to query INS databases to determine if a subject they have encountered is an alien known to the INS. This is a manually generated search of INS databases and not tied to NCIC by interface.
- **LESC** - Law Enforcement Support Center. The LESC is the INS representative to the NCIC Advisory Policy Board and is the operational contact between INS and NCIC.
- **NCIC** - National Crime Information Center.
- **NCIC Eligible Case** - A case is considered NCIC eligible if the A-file or temporary file contains all the elements and documents necessary for it to qualify for entry into NCIC. Those elements are:

- Warrant of Deportation or Removal (*form I-205*) properly issued pursuant to proceedings conducted under Section 240 of the Immigration and Nationality Act, (*INA, or Act*) or its predecessor section in previous versions of the Act, and containing charges lodged under Section 237(a) of the INA after March 31, 1997.
- A final order of deportation or removal properly issued by an immigration judge pursuant to proceedings conducted under Section 240 of the Immigration and Nationality Act, (*INA, or Act*) or its predecessor section in previous versions of the Act, and containing charges lodged under Section 237(a) of the INA after March 31, 1997.
- The alien is not eligible for Temporary Protected Status (TPS), or any of the other judicial, statutory, or discretionary relief from, or deferrals of, removal.
- Classifiable ten-print fingerprint card (*form FD258 or FD 249*).
- Identifiable photograph.
- I-213 or other documentation providing biographic/biometric data.
- Amenability to prosecution. (*See below charts.*)

Aliens with final orders based on charges filed after April 1, 1997 (post-IIRIRA cases)			
	Category	Amenable to Prosecution under Section 243(a)	Eligible for entry into NCIC/WPF
1	expedited removal cases	no (no 237 charge used in expedited removal)	NO
2	file contains proof of service of Notice to Appear (signed mail receipt or personal service)	no (NTA advisal language insufficient to support probable cause ¹), unless alien falls into one of the "yes" categories below	CONDITIONAL ²

¹ The advisal on the NTA reads, in pertinent part: "If you fail to attend the hearing at the time and place designated on this notice, or any date and time later directed by the Immigration Court, a removal order may be made by the immigration judge in your absence, and you may be arrested and detained by the INS." The DOJ Office of Legal Counsel has opined that this language does not put an alien sufficiently on notice that a removal order *will* issue and does not provide a time frame for issuing that order. Thus, an alien would not be on notice that he or she is required to leave the country at a certain time and the failure to do so cannot be said to be willful.

² Entry of these cases into NCIC is conditional on the notations found under the Amenable to Prosecution column.

3	file contains proof that the alien was present for proceedings, took an order of voluntary departure with an alternate order of removal, and was still in the US 90 days after expiration of voluntary departure period	yes, if no appeal taken; if appeal is taken, then alien falls into categories 6 or 8 below	YES
4	file contains proof that the alien was present for proceedings, was ordered removed, and waived appeal	yes	YES
5	file contains proof that the alien was present for proceedings, was ordered removed, and reserved appeal	yes, if MS verifies that no appeal was filed	YES
6	file contains proof that the alien was present for proceedings, ordered removed, appealed, and removal order was upheld by BIA	yes, if alien was represented by counsel before the Board (not merely before the IJ); for non-represented aliens, no	YES CONDITIONAL
7	file contains no proof of actual service of Notice to Appear and no indication that alien was present at hearing	no	NO ³
8	file contains proof that the immigration judge's order of relief was overturned on Service appeal	yes, if alien was represented by counsel before the Board (not merely before the IJ); for non-represented aliens, no	YES CONDITIONAL

Aliens with final orders prior to April 1, 1997 (pre-IIRIRA cases)⁴			
	Category	Amenable to Prosecution under Section 242(e)⁵	Eligible for entry into NCIC/WPF
1	exclusion cases	no (no 237/241 charge used in exclusion)	NO
2	file contains proof of service of Order to Show Cause (signed mail receipt or personal service), and one of the charges sustained in the OSC is a criminal or national security charge	no (advisal language insufficient to support probable cause), unless alien falls into one of the categories below	NO
3	OSC was not based on a criminal or national security charge	no	NO

³ This number should be quite small, as immigration judges generally will not conduct in absentia hearings where the Service cannot prove that the alien received the Notice to Appear.

⁴ DOJ Criminal Division takes the position that, while it is an unsettled question as to whether a 243(a)(1)(A) or 242(e) violation would be viewed by the courts as a continuing offense, it is a defensible position to treat it as such. This interpretation, if accepted by the courts, would eliminate concerns over whether pre-IIRIRA cases are no longer "amenable to prosecution" because barred by the statute of limitations.

⁵ Section 242(e) was the precursor to current section 243(a). Immediately prior to IIRIRA, section 242(e) applied to all deportation orders based on any ground of deportability. But prior to amendments in the 1994 Crime Bill, section 242(e) applied only to those whose deportation order was based on a criminal or national security ground of deportability. In an effort to avoid further complication to an already complicated chart, we are lumping all these pre-IIRIRA deportation orders together.

4	file contains proof that the alien was charged using criminal or national security grounds, was present for proceedings, took an order of voluntary departure with an alternate order of removal, and was still in the US 90 days after expiration of voluntary departure	yes, if no appeal taken; if appeal is taken, then alien falls into categories 7 or 9 below	YES
5	file contains proof that the alien was charged using criminal or national security grounds, was present for proceedings, was ordered removed, and waived appeal	yes	YES
6	file contains proof that the alien was charged using criminal or national security grounds, was present for proceedings, was ordered removed, and reserved appeal	yes, if INS verifies that no appeal was filed	YES
7	file contains proof that the alien was charged using criminal or national security grounds, was present for proceedings, was ordered removed, appealed, and order was upheld on appeal	yes, if alien was represented by counsel before the Board (not merely before the IJ); for non-represented aliens, no	YES CONDITIONAL
8	file contains no proof of actual service of Notice to Appear and no indication that alien was ever present for a hearing	no	NO

- **NCIC Ineligible Case** – A case is considered ineligible for NCIC if the A-file or temporary file lacks elements necessary for it to qualify for entry into NCIC. Categories of cases that are ineligible for entry into NCIC include cases:
 - Pending appeal.
 - With unconsolidated A-Files.
 - Subsequent to the order of removal the alien was granted legal status.
 - In which the alien is eligible for Temporary Protected Status (TPS), or any of the other judicial, statutory, or discretionary relief from, or deferrals of, removal.
 - Lacks identifying data (fingerprints, photograph, description).
 - Lacks amenability to prosecution.
- **Pull Ticket** – A notice from HQORS to a field office directing that the field office pull an A-file and take some action with it. Pull tickets are generated over CIS, and are printed at the action office on adhesive labels that are placed on the file once it has been pulled.

- **Resolution Unit (RU)** – A unit of officers tasked with resolving administrative and/or legal deficiencies in A-files submitted to the LESC for entry into NCIC. For logistical convenience the unit is located at the LESC, but is an element of HQDRO.
- **Stage I Case** – Alien with a final order of deportation, exclusion or removal dated before January 28, 2002. All Stage I cases are within the population of AAI-2.
- **Stage II Case** - Alien with a final order of deportation or removal dated on or after January 28, 2002 (the beginning date for the AAI). All Stage II cases are within the population of AAI-2. It is the goal of the initiative that no backlog of Stage II cases be allowed to develop.



U.S. Immigration and Customs Enforcement

DEC -1 2004

MEMORANDUM FOR: Field Office Director

FROM: Victor x. Cerda
Acting Director

A handwritten signature in black ink, appearing to read "Victor x. Cerda".

SUBJECT: Use of Immigration Enforcement Agents in Fugitive Operations

Purpose

Identify proper utilization of Immigration Enforcement Agents in Fugitive Operations conducted under the auspices of the National Fugitive Operations Program (NFOP).

Background

The primary mission of NFOP is to identify, locate, and apprehend individuals identified as fugitives wanted by ICE with the highest priority placed on those fugitives who have been convicted of, or are being prosecuted for, crimes committed. Further, NFOP's goal is to eliminate the backlog of fugitives and ensure that the number of aliens deported equals the number of final orders of removal issued by the immigration courts in any given year. To accomplish this, teams were strategically deployed around the country to work solely on those cases identified as fugitives and attempt to locate and apprehend those persons who will ultimately be removed from the United States.

Currently, the NFOP has 18 teams in 16 locations. Each team consists of a Supervisory Deportation Officer (SDO), four Deportation Officers (DO), an Immigration Enforcement Agent (IEA) and a Deportation Assistant (DA). In Field Offices with multiple teams, support and supervisory duties are shared amongst the teams. Our strategic NFOP goal is to deploy a full team to each FOD.

While the IEA is an integral part of the team, the use of this position has varied greatly in the Field Offices. This memorandum sets national DRO policy on the use of an IEA on fugitive operations missions to ensure that the IEA is utilized within the parameters of their position description.

Policy

Effective immediately, Field Offices will ensure that IEA's are not used as a principal means of carrying out fugitive operations. Instead IEA's will act in a support function to those teams. IEA positions were deployed, and will continue to be deployed, as part of the NFOP with the intention of

Subject: Use of Immigration Enforcement Agents in Fugitive Operations Page 2

supporting the fugitive operation. This does not preclude the use of IEA's for the NFOP mission. IEA's can continue to be used as a force multiplier in that they can respond to NCIC hits or callouts from correctional facilities and place detainees. They are not to be assigned a fugitive caseload or as a fugitive case officer, but can search national governmental databases in the development of leads, under the direction of the fugitive case officer. However, Field Office Directors should be aware that access to commercial databases is limited, with Deportation Officers given a priority in the issuance of passwords/access. Further, IEA's will not serve as the primary interviewer of subjects in the development of field leads. They may serve as a member of the principle apprehending team, but always in conjunction with the SDO or one of the DO's to ensure the continuity of the mandatory two-officer team concept. (The team makeup of an SDO, four DO's and an IEA was designed in that manner to ensure that three two-officer pairings would always be possible to maintain this concept.)

A good practice implemented by several offices, and one that I encourage, is the rotating of IEA's through the position assigned to the fugitive operations team. In this fashion, each IEA in the office will receive on-the-job training and experience in relation to fugitive operations while maintaining proficiency in other aspects of the IEA occupation, such as the Criminal Alien Program (CAP). This will also allow those IEA's, when not assigned to Fugitive Operations, to continue to perform overseas escorts. For the purpose of continuity, this rotation should be a minimum of four to six month periods.

Please ensure this policy is distributed to your fugitive operations teams and staff for immediate implementation. All questions and issues regarding this policy should be directed to (b)(6),(b)(7)(C) acting Chief, Human Capital Management, who can be reached at (202) 616-(b)(6),(b)(7)(C) or to (b)(6),(b)(7)(C) (b)(6),(b)(7)(C) Chief, Fugitive Operations Unit at (202) 353-(b)(6),(b)(7)(C).

U.S. Department of Homeland Security
425 I Street, NW
Washington, DC 20536



U.S. Immigration
and Customs
Enforcement

MEMORANDUM FOR: Field Office Directors AUG 3 2006

FROM: John P. Torres
Acting Director

A handwritten signature in black ink, appearing to read "John P. Torres".

SUBJECT: **Operation Secure Streets – Directive and Guidance**

This Memorandum serves to provide directive and guidance for Operation Secure Streets, an operation developed to address illegal aliens convicted of violations of local driving under the influence laws in your respective areas of responsibility (AORs).

The 23 Field Office Director (FOD) offices shall conduct threat assessments to identify the scope of the problem in their AORs. The Headquarters Detention and Removal Operations (HQDRO) Compliance Enforcement Division (CED) will coordinate with the FODs to develop a five-step process for implementation of Operation Secure Streets, to ensure uniformity and consistency in identifying and prioritizing targets and establish coordination between ICE DRO and other law enforcement agencies.

The Five-Step process, explained in detail below, will be used to identify threats and obtain intelligence, analyze/exploit intelligence, prioritize targets and coordinate with U.S. Attorneys and law enforcement partners, to commence enforcement actions against illegal aliens convicted of violating the drunken driving laws in your AOR.

Step 1 - Identify Threats and Obtain Intelligence:

Effective immediately, FOD Offices shall contact all local law enforcement, probation and parole offices within their AOR to obtain electronic lists of foreign born persons convicted of drunk driving offenses. These lists shall then be forwarded to the Law Enforcement Support Center (LESC) and the Fugitive Operations Support Center (FOSC) for assessment.

Step 2 - Analyze/Exploit Intelligence:

The Fugitive Operations Unit (Fug Ops) within the HQCED shall coordinate the simultaneous collection of the data described in Step 1 with LESC and FOSC. FOSC exploits the data for potential commercial database leads and establishes links and relationships within the data. The LESC runs the data against various ICE and commercial databases in order to identify potential violations under ICE's jurisdiction. The FOSC and LESC work product shall be analyzed and packaged as target folders.

Step 3 - Prioritize Targets:

As target folders are completed, Fug Ops will forward them to the respective FODs for action. The FODs shall prioritize the target folders based on the above analysis and any additional information developed locally. The aliens are NOT limited to those possessing final orders of removal and shall be prioritized as follows:

1. Aliens amenable to removal with prior aggravated drunk driving convictions.
2. Aliens amenable to removal with arrest records indicative of recidivist drunk driving.
3. Aliens amenable to removal with substance-impaired driving convictions.
4. Aliens previously convicted of drunk driving who may be prosecuted for a federal or local violation of law.
5. Aliens amenable to removal without criminal convictions, but who have been previously arrested for alcohol-related or drug-related driving offenses.

If at any time during the process targets are identified as imminent threats to national security or public safety, FODs will initiate immediate enforcement action on those targets.

Step 4 - Coordination with U.S. Attorneys and Law Enforcement Partners:

Upon completion of target prioritization, the FODs shall meet with their respective U.S. Attorneys, brief them on Operation Secure Streets, and seek prosecution as appropriate for those subjects targeted for criminal arrest. FOD offices shall contact federal, state and local law enforcement agencies to ensure coordination and cooperation of enforcement actions.

Step 5 - Enforcement Actions:

Following coordination and cooperation with partner law enforcement agencies, the FODs shall commence enforcement actions to apprehend aliens amenable for removal and/or for existing violations of law. These arrests will be made in the prioritized order listed in Step 3 and will serve as an opportunity to develop sources of information.

Information and intelligence developed during debriefing of gang members should be exploited and utilized for subsequent enforcement actions.

Taskings: All Department of Homeland Security Counterpart Offices

All FODs are directed to contact their respective counterpart at Office of Investigations (OI) and the Border Patrol Chiefs and Port Directors at Customs and Border Protection (CBP) to brief them on Operation Secure Streets, and to establish local protocols for FOD notification when an illegal alien drunken driver is encountered by OI or CBP.

Reporting Requirements:

Operation Secure Streets is expected to receive significant attention from Assistant Secretary Myers and ICE HQ is required to prepare a weekly update on its progress and success.

Therefore, the results of this operation shall be provided in the National Fugitive Operations Program Weekly Report, which is revised to allow for Operation Secure Streets reporting. In addition, all Operation Secure Streets activity shall be entered and captured in the operational field within the Fugitive Case Management System (FCMS).

It is essential that **all** FODs provide timely notification of **all** activity involving apprehensions conducted under the auspices of this operation. Advanced telephonic notification and an A/S Note stating impending enforcement activities relating to this operation shall be made by the Assistant Field Office Director (AFOD) or Deputy Field Office Director (DFOD) to Fugitive Operations Unit Chief at (202) 616-(b)(6) or Fugitive Operations Staff Officer (b)(6),(b)(7)(C) at (202) 616-(b)(6), **24 hours** prior to commencement of the activity. Upon completion of the enforcement action, the AFOD/DFOD shall electronically notify Program (b)(6),(b)(7)(C) and Special Assistant (b)(6),(b)(7)(C) (202) 616-(b)(6) of the results of the activity. This procedure is in addition to normal reporting requirements through the Significant Event Notification system and is required for all FOD offices.

When appropriate and warranted, FODs shall utilize their local public affairs officers to highlight the successes of Operation Secure Streets. In addition, FODs should utilize existing ICE Attaché offices to further enforcement actions or enhance coordination with foreign counterparts by coordinating with (b)(6),(b)(7)(C) acting Unit Chief of the Travel Document Unit.

Any comments or questions regarding Operation Secure Streets should be directed to Deputy Assistant Director (b)(6),(b)(7)(C) Compliance Enforcement Division, at (202) 616-(b)(6).

Office of Detention and Removal Operations

U.S. Department of Homeland Security
425 I Street, NW
Washington, DC 20536



U.S. Immigration
and Customs
Enforcement

NOV 08 2007

MEMORANDUM FOR Assistant Directors
 Deputy Assistant Directors
 Field Office Directors

FROM: John P. Torres
 Director

A handwritten signature in black ink, appearing to read "John P. Torres".

SUBJECT: "Operation Cross Check – Directive"

This memorandum serves to provide direction for the implementation of "Operation Cross Check."

Through targeted enforcement and alignment of resources, U.S. Immigration and Customs Enforcement (ICE) National Fugitive Operations Program (NFOP) has conceived and implemented focused enforcement efforts targeting specific populations of aliens. The two major enforcement efforts being conducted by Fugitive Operations Teams (FOT's) nationwide are "Operation Return to Sender" and "Operation Secure Streets."

The objective of "Operation Return to Sender" is to apply a methodical approach to the location and apprehension of ICE fugitive cases concentrated in specific geographical areas. The objective of "Operation Secure Streets" is to locate and apprehend ICE fugitives, and illegal aliens who have been convicted of violations concerning operating a motor vehicle while under the influence.

"Operation Cross Check" will serve as the operational umbrella for all other focused enforcement efforts conducted by FOT's that target other, specific alien populations, such as aliens working in specific industries, aliens from specific countries, or aliens who have been convicted of specific crimes. The nature of an "Operation Cross Check" effort may be predicated on national events or situations unique to your particular Area of Responsibility (AOR); requests by ICE counterparts or other valid agencies; or directives from a Detention and Removal Operations (DRO) component.

Information for an "Operation Cross Check" initiative will be received from a variety of sources, including Headquarters (HQ) DRO entities; local, state and other federal sources; the Law Enforcement Support Center (LESC); the Fugitive Operations Support Center (FOSC); and any other valid source.

Subject: Operation Cross Check — Directive and Guidance

Page 2

Field Offices shall develop primary target lists and ensure that the lists are queried in the various ICE indices to ensure de-confliction with the Office of Investigations (OI). Field Offices will coordinate with the Fugitive Operations Support Center (FOSC) and the Detention Operations Coordination Center (DOCC) prior to implementing all "Operation Cross Check" initiatives. This process will ensure consistency in prioritizing targets, and enhance coordination between ICE DRO and other law enforcement agencies.

Planning and execution of Operation Cross Check consists of five steps: (b)(7)(E)

(b)(7)(E)

Step 1 - Develop Primary Target Lists:

Field Offices shall utilize local law enforcement contacts and other valid sources to obtain electronic lists of foreign-born persons within their respective AOR's who meet the operation's specific criteria. The primary target list shall be queried into Treasury Enforcement Communication System (TECS) to ensure OI de-confliction. The list will then be forwarded to the FOSC for an initial assessment.

Step 2 — Analyze and Exploit Target Lists:

The FOSC shall review the information and compare it to law enforcement and commercial databases to develop lists of potential targets. The FOSC will then forward the target list to the appropriate Field Office for action.

Step 3 - Prioritize Targets:

Upon receipt of the list from the FOSC, FOT's will prioritize targets utilizing the following NFOP criteria:

1. Aliens with a nexus to terrorism
2. Fugitive aliens with criminal convictions
3. Non-fugitive aliens with criminal convictions
4. Other fugitive aliens
5. Aliens amenable to prosecution for federal or local violation(s) of law, and other removable aliens.

Field Offices shall initiate immediate enforcement action on any alien who is identified as an imminent threat to national security or public safety.

Step 4 - Coordinate with U.S. Attorneys and Law Enforcement Partners:

Upon prioritizing the target lists, Field Office Directors (FOD's) shall meet with their respective U.S. Attorney's Office (USA's). These meetings will serve to brief the USA's on Operation Cross Check and solicit prosecution, as appropriate, of subjects targeted for

Subject: Operation Cross Check - Directive and Guidance

Page 3

criminal arrest FOD's shall also contact federal, state, and local law enforcement agencies to ensure cooperation with and coordination of enforcement actions.

Step 5 - Commence Enforcement Actions:

Following coordination with partner law enforcement agencies, the FOD's shall commence enforcement actions to arrest aliens amenable to removal and aliens who are already involved in the process of removal. These arrests will be made in the prioritized order listed in Step 3, and will serve as an opportunity to develop sources of information and obtain intelligence that shall be shared with appropriate ICE counterparts.

Taskings: Coordination with U.S. Department of Homeland Security Counterparts

FOD's are directed to contact and brief their respective counterparts at the Office of Investigations (OI) and Customs and Border Protection (CBP) on planned enforcement actions.

Reporting Requirements:

Prior to the initiation of any enforcement action, an operational plan shall be forwarded to the HQ Fugitive Operations Unit for review. Upon HQDRO approval, an AS Note detailing the impending enforcement activities will be prepared by the Assistant Field Office Director (AFOD) or Deputy Field Office Director (DFOD) and sent to the HQ Fugitive Operations Unit. The Field Office is also required to provide the DOCC and FOSC with a copy of the approved operational plan. These procedures are in addition to the normal reporting requirements of the Significant Event Notification (SEN) system.

All "Operation Cross Check" activity must be entered in the Fugitive Case Management System (FCMS), utilizing the option "Operation Cross Check" in the Operations field. The results of "Operation Cross Check" shall be included in the National Fugitive Operations Program Weekly Report. It is essential that all FOD's provide timely notification of all arrests and other activities conducted under the auspices of this operation. In addition, it is imperative that arrest statistics be forwarded daily to the HQ Fugitive Operations Unit during the course of the operation, via the HQDRO, FUGOPS mailbox.

Any comments or question regarding Operation Cross Check should be directed to

(b)(6), (b)(7)(C)

National Fugitive Operations Program Unit Chief, at (202) 616-

(b)(6), (b)(7)(C)



U.S. Immigration and Customs Enforcement

MEMORANDUM FOR: ALL FIELD OFFICE DIRECTORS JUN 13 2008

FROM: Gary E. Mead
Acting Director

SUBJECT: Updated Requirements for the Placement of ICE Fugitive, Deported Aggravated Felon Cases and Criminal Warrants into the National Crime Information Center (NCIC) Immigration Violator File (IVF)

Purpose

The Law Enforcement Support Center (LESC) have indicated that a significant portion of the alien files, being sent from the field for entry into the National Crime Information Center's (NCIC) Immigration Violator File (IVF), are routinely rejected—as they fail to meet current entry standards. This memorandum reiterates the NCIC IVF case entry policy, and also provides improved guidelines to reduce or eliminate current case entry rejection rates.

Background

In August 2002, Office of Detention and Removal Operations (DRO) Headquarters promulgated the *Absconder Apprehension Initiative, Standard Operating Procedure* (AAI/SOP). This was done pursuant to direction received from the issuance of the Absconder Apprehension Initiative¹ (AAI), which commenced in January 2002 by the Deputy Attorney General of the Department of Justice. One of the largest, and most vital, aspects of the AAI was the importance of utilizing the NCIC as a force multiplier, using the assets of other federal, state and local law enforcement agencies (LEAs) in the identification, location and arrest of fugitives.

The AAI/SOP established the protocol for sending cases to the LESC for entry into NCIC. Although the specific procedures for the placement of these cases into NCIC have changed, the need to do so in a timely manner has not. Section II, Paragraph A of the AAI/SOP states:

"In order to avoid an increase in the backlog of AAJ cases, district DRO officers shall attempt to locate and apprehend all aliens for whom a final order is received. If field units are unsuccessful in locating and apprehending the alien within 120 days of the date of the final order, the alien will be considered an absconder and the case will be sent to the LESC for NCIC entry in accordance with the procedures below. Supervisors are reminded that the entry of a case into NCIC does not preclude officers from continuing attempts to locate the fugitive."

Discussion

¹ The AAI can be divided into two separate and distinct phases. Phase One (AAI-1) is identified as that operation which dealt with an initial group of aliens from countries as having ties to terrorist organizations. The primary purpose of AAI-1 was to gather intelligence in the defense of our national security and was responsibility of the INS Investigation Division. AAI, Phase Two (AAI-2) was the responsibility of DRO. Its objective was to locate, arrest, and remove fugitive aliens from the United States. AAI-2 was a part of the then INS' overall National Fugitive Operations Program which was designed to address the problem of locating, arresting, prosecuting and/or removing aliens who have violated the nation's immigration laws.

The purpose of placing cases into NCIC is to create a force multiplier, utilizing assets from either federal, state and local law enforcement agencies (LEAs). By placing ICE fugitive and deported aggravated felon cases into NCIC, there is a higher probability that both ICE fugitive and re-entry aggravated felon arrests will be identified during the course of LEA business.

Field Office Directors (FODs) must make sure that all open ICE fugitive cases are sent to the LESC before 120 days have elapsed from the date of the final order of removal. FODs must also ensure that deported aggravated felon cases are sent to the LESC as soon as the case is properly closed out in the DRO database. Improved procedures for NCIC entries are outlined below.

Action

FODs will conduct a review of all open fugitive case files within their respective docket control offices, guaranteeing that cases with final orders over 120 days are properly entered into NCIC. In addition, FODs will make certain that deported aggravated felon cases are sent to the LESC for NCIC entry as soon as the case is properly closed out in the DRO database.

ICE/NCIC Warrant Entry Requirements

FODs will utilize the following procedures for case entry into NCIC. Under no circumstance will a case that does not meet the below NCIC entry requirements be sent to the LESC for NCIC entry. DFF and ICE fugitive cases are the only cases that should be sent to the LESC.

ICE fugitive case entry requirements:

To avoid delays in NCIC entry, it is imperative that all record checks that may cause any impediments to the alien's removal, are completed before the Executive Office for Immigration Review (EOIR), Board of Immigration Appeals (BIA) or federal courts. The DRO database must be accurate and up to date (i.e. case category, FBI number, criminal data, IJHR data, CCOM, est.), and the alien file must contain the following documents: Form I-205-- signed or stamped on the front indicating that removal was ordered; Form I-213, I-217, or G-325A; the Immigration Judge removal order; 10 print card (Red or Blue) and a photo (original or copy). If applicable, A-Files must be consolidated in the Central Index System (CIS). Alien files should not be transferred to the LESC unless all necessary documents are included. Exceptions must be approved by the LESC before the alien file is transferred.

It is the local office's responsibility to notify the LESC of any change in the ICE fugitive case category. Upon a case category change, the local office must make sure that the DRO database is properly updated. This will allow the LESC to take the ICE fugitive out of NCIC; minimizing the likelihood of detaining an alien that is not currently wanted, and avoiding violating any of the Department of Justice's (DOJ) rules that govern the use of the NCIC system.

Deported Aggravated Felon entry requirements:

The DRO database must be accurate, up to date, and indicate that the alien is an aggravated felon. The alien file must contain the following: signed and executed Form I-205, for identification purposes, I-213 I-217, or G-325A forms; the Immigration Judge Removal Order; a copy of the NCIC print out or conviction documents (indicating a conviction for an aggravated felony); 10 print card (Red or Blue) and a photo (original or copy). If applicable, A-files must be consolidated in CIS. Alien files should not be transferred to the LESC unless all required documents are included. The LESC must approve any exceptions before the file is transferred.

Subject: Placement of Fugitive and Deported Aggravated Felon Cases into the National Crime Information Center's Immigration Violator File (IVF)
Page 3

Criminal Warrant Requirements:

A copy of the Criminal Warrant, signed by a US Magistrate, must be sent along with Customs Form-59 (CF-59); if available, a copy of the Complaint and/or Affidavit; Forms I-213, G-166 and I-166; and biometric or biographical identifiers (i.e. photos and fingerprints, scars, marks or tattoos should also be sent if available). ***It should be noted that the A-File is not needed to enter a criminal warrant into NCIC.*** The CF59, Criminal Warrant, and any other pertinent information should also be faxed to the LESC, NCIC Unit, Attention: NCIC Supervisor at (802) 872-6047. For clarity reasons, it may be easier to email the photos and prints to the supervisor on duty.

Attached is an NCIC checklist for WPF/DFF cases, and a Custom Form-59 that must be completed and signed by a DKO Supervisor. These checklists should be placed on top of the inside jacket of the A-File prior to shipping to the Law Enforcement Support Center.

LESC Mailing Address:
Law Enforcement Support Center
188 Harvest Lane
Williston, Vermont 05495
Phone (802) 872- (b)(6)
Fax (802) 872- (b)(6)
(b)(7)(C)

Any questions regarding this guidance should be directed toward (b)(6),(b)(7)(C) Unit Chief, HQ
Fugitive Operations Support Center via email; or by calling (802) 660- (b)(6)
(b)(7)(C)